

<b>SOLICITATION, OFFER, AND AWARD</b>		1. Caption		Page of Pages	
		<b>Affordable Care Act Consulting Services</b>		1	87
2. Contract Number	3. Solicitation Number	4. Type of Solicitation	5. Date Issued	6. Type of Market	
	<b>DCHT-2011-R-0003</b>	<input type="checkbox"/> Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source	<b>2/14/2011</b>	<input checked="" type="checkbox"/> Open	
7. Issued by:			8. Address Offer to:		
<b>Department of Health Care Finance</b> Office of the Director - Office of Contracts 899 North Capitol Street, NE, 6th Floor Washington, DC 20002			Office of Contracting and Procurement - Bid Room 441 4th Street, NW Suite 703 South Washington, DC 20001 Attn: Department of Health Care Finance		

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

**SOLICITATION**

9. Sealed offers in original and 5 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at 441 4th Street NW., Suite 703 South until 2:00 PM local time March 7, 2011 (Hour) (Date)

CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.

10. For Information Contact	A. Name	B. Telephone		C. E-mail Address
	<b>Lillian Beavers</b>	(Area Code) <b>202</b>	(Number) <b>724-4349</b>	<a href="mailto:lillian.beavers3@dc.gov">lillian.beavers3@dc.gov</a>

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**OFFER**

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 120 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

13. Discount for Prompt Payment	<input checked="" type="checkbox"/> 10 Calendar days %	<input type="checkbox"/> 20 Calendar days %	<input type="checkbox"/> 30 Calendar days %	<input type="checkbox"/> ___ Calendar days %
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14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):	Amendment Number	Date	Amendment Number	Date

15B. Telephone			15 C. Check if remittance address is different from above - Refer to Section G	17. Signature	18. Offer Date
(Area Code)	(Number)	(Ext)			

**AWARD (TO BE COMPLETED BY GOVERNMENT)**

19. Accepted as to Items Numbered	20. Amount	21. Accounting and Appropriation

22. Name of Contracting Officer (Type or Print)	23. Signature of Contracting Officer (District of Columbia)	24. Award Date
<b>James H. Marshall</b>		

**SECTION B  
SUPPLIES OR SERVICE AND PRICE/COST**

**B.1 INTRODUCTION**

The Government of the District of Columbia Department of Health Care Finance (DHCF) is seeking consulting services to provide project management and technical assistance related to health care reform in the District. The Contractor shall provide support in the development of the District’s Health Insurance Exchange and other initiatives described in the Affordable Care Act (Applicable Document #1).

**B.2 CONTRACT TYPE**

The District contemplates the award of a labor hour type contract.

**B.3 PRICE SCHEDULE – LABOR HOUR**

**B.3.1 BASE YEAR PERIOD OF PERFORMANCE**

<b>Contract Line Item No. (CLIN)</b>	<b>Line Item Description</b>	<b>Unit</b>	<b>Price per Unit</b>	<b>Est. Quantity</b>	<b>Estimated Total Price</b>
0001	Provide project management and technical assistance related to health care reform in the District as described in C.3				
0001AA	Senior Consultant	Hour	\$ _____	1,040	\$ _____
0001AB	Consultant	Hour	\$ _____	520	\$ _____
0001AC	Project Analyst	Hour	\$ _____	520	\$ _____
<b>Base Year Period of Performance Total Estimated Price</b>					<b>\$ _____</b>

**B.3.1 OPTION YEAR ONE PERIOD OF PERFORMANCE**

<b>Contract Line Item No. (CLIN)</b>	<b>Line Item Description</b>	<b>Unit</b>	<b>Price per Unit</b>	<b>Est. Quantity</b>	<b>Estimated Total Price</b>
0101	Provide project management and technical assistance related to health care reform in the District as described in C.3				
0101AA	Senior Consultant	Hour	\$ _____	1,040	\$ _____
0101AB	Consultant	Hour	\$ _____	520	\$ _____
0101AC	Project Analyst	Hour	\$ _____	520	\$ _____
<b>Option Year One Performance Total Estimated Price</b>					<b>\$ _____</b>

**B.3.2 OPTION YEAR TWO PERIOD OF PERFORMANCE**

<b>Contract Line Item No. (CLIN)</b>	<b>Line Item Description</b>	<b>Unit</b>	<b>Price per Unit</b>	<b>Est. Quantity</b>	<b>Estimated Total Price</b>
0201	Provide project management and technical assistance related to health care reform in the District as described in C.3				
0201AA	Senior Consultant	Hour	\$ _____	1,040	\$ _____
0201AB	Consultant	Hour	\$ _____	520	\$ _____
0201AC	Project Analyst	Hour	\$ _____	520	\$ _____
<b>Option Year Two Performance Total Estimated Price</b>					<b>\$ _____</b>

## SECTION C SPECIFICATIONS/WORK STATEMENT

### C.1 SCOPE OF WORK

The Government of the District of Columbia Department of Health Care Finance (DHCF) is seeking consulting services to provide project management and technical assistance related to health care reform in the District. The Contractor shall provide support in the development of the District's Health Insurance Exchange and other initiatives described in the Affordable Care Act (Applicable Document #1).

#### C.1.1 APPLICABLE DOCUMENTS

The documents that follow are applicable to this procurement and are hereby incorporated by this reference. The Contractor shall provide the required services in accordance with the following and any future revisions of each document.

Item No.	Document Type	Title	Date
1	Federal Law	Affordable Care Act §1311 <a href="http://www.govtrack.us/congress/billtext.xpd?bill=h111-3590">http://www.govtrack.us/congress/billtext.xpd?bill=h111-3590</a> ACA Summary <a href="http://www.govtrack.us/congress/bill.xpd?bill=h111-3590&amp;tab=summary">http://www.govtrack.us/congress/bill.xpd?bill=h111-3590&amp;tab=summary</a>	Most Recent
2	DHCF Solicitation Document	Department of Health Care Finance Solicitation DCHT-2011-T-0001 Health Insurance Exchange Planning Solicitation	Most Recent
3	Web Site	Department of Health Care Finance <a href="http://dhcf.dc.gov">http://dhcf.dc.gov</a>	Most Recent
4	Survey	Health Insurance Coverage in the District Urban Institute	2010
5	Working Paper	Assessing Health and Health Care in the District of Columbia RAND Corporation, Inc.  Phase 1 <a href="http://www.rand.org/pubs/working_papers/WR534.html">http://www.rand.org/pubs/working_papers/WR534.html</a>  Phase 2 <a href="http://www.rand.org/pubs/working_papers/WR579.html">http://www.rand.org/pubs/working_papers/WR579.html</a>	Most Recent

#### C.1.2 DEFINITIONS

**C.1.2.1 Affordable Care Act (ACA)** The comprehensive health care reform law enacted in March 2010. The law was enacted in two parts: The Patient Protection and

Affordable Care Act was signed into law on March 23, 2010 and was amended by the Health Care and Education Reconciliation Act on March 30, 2010. The name “Affordable Care Act” is used to refer to the final, amended version of the law. These laws include provisions for the establishment of state-based Health Insurance Exchanges.

- C.1.2.2 Benefits** The health care items or services covered under a health insurance plan. Covered benefits and excluded services are defined in the health insurance plan's coverage documents. In Medicaid or CHIP, covered benefits and excluded services are defined in state program rules.
- C.1.2.3 Benefit Package** is the detailed outline of covered services, benefit limitations, deductibles, co-pays and other co-insurance aspects associated with a health insurance policy.
- C.1.2.4 Children’s Health Insurance Program (CHIP)** The Children's Health Insurance Program is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligibility groups, benefit packages, payment levels for coverage, and administrative and operating procedures. CHIP provides a capped amount of funds to States on a matching basis. Federal payments under title XXI to States are based on State expenditures under approved plans effective on or after October 1, 1997.
- C.1.2.5 DC HealthCare Alliance** (Alliance) is a DC-funded program that provides community-based health care and medical services to DC residents ineligible for Medicaid with household incomes at or below 200 percent of the Federal Poverty level. The Program was established by the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.1.Law 14-18; D.1. Official Code § 7-1401 *et seq*).
- C.1.2.6 Department of Health Care Finance (DHCF)** is the District of Columbia Government agency responsible for administering publicly-financed medical assistance benefits, including Medicaid services under Title XIX, the Children’s Health Insurance Program, the Immigrant Children’s Health Program, and the DC HealthCare Alliance.
- C.1.2.7 Department of Human Services (DHS) Income Maintenance Administration (IMA)** is the District agency responsible for eligibility determination for a number of public benefit programs, including Medicaid, the DC Healthcare Alliance, Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Child Care Subsidy, Burial Assistance, Emergency Rental Assistance, Interim Disability Assistance, and Refugee Cash Assistance.

- C.1.2.8 Department of Insurance and Securities and Banking (DISB)** is the District agency responsible for regulating financial-service businesses in the District by administering DC's insurance, securities and banking laws, rules and regulations. DISB's primary goal is to ensure residents of the District of Columbia have access to a wide choice of insurance, securities and banking products and services, and residents are treated fairly by the companies and individuals that provide these services.
- C.1.2.9 District of Columbia (District)** refers to the Government of the District of Columbia
- C.1.2.10 Employer-Sponsored or Group Insurance** refers to insurance which is issued to a group of usually no less than three individuals, such as an employer, credit union, or trade association, and which provides coverage for individuals and sometimes their dependents.
- C.1.2.11 Essential Benefits** A set of health care service categories that must be covered by certain plans, starting in 2014. These include doctor office visits, hospitalizations, and prescriptions. Insurance policies must cover these benefits to be certified and offered in Exchanges, and all Medicaid State plans must cover these services by 2014. Starting with plan years or policy years that begin on or after September 23, 2010, health plans can no longer impose a lifetime dollar limit on spending for these services and all plans, except grandfathered individual health insurance policies, must phase out annual dollar spending limits for these services by 2014.
- C.1.2.12 Exchange** See Health Insurance Exchange
- C.1.2.13 Exchange Planning Grant** refers to the State Planning and Establishment Grant for the Affordable Care Act's Exchanges, awarded by the U.S. Department of Health and Human Services.
- C.1.2.14 Federal Poverty Level (FPL)** A measure of income level issued annually by the Department of Health and Human Services. Federal poverty levels are used to determine your eligibility for certain programs and benefits.
- C.1.2.15 Health Insurance Exchange (Exchange)** A new transparent and competitive insurance marketplace where individuals and small businesses can buy affordable and qualified health benefit plans. Exchanges will offer a choice of health plans that meet certain benefits and cost standards.
- C.1.2.16 Internal Revenue Service (IRS)** is the federal agency responsible for administering and enforcing the Treasury Department's revenue laws, through the assessment and collection of taxes, determination of pension plan qualification, and related activities.

- C.1.2.17** **Mayor's Health Reform Implementation Committee (HRIC)** refers to the District's committee, established through Mayoral Executive Order on May 14, 2010, responsible for implementing health reform in the District. The HRIC is co-chaired by the Directors of the Department of Health Care Finance (DHCF) and the Department of Insurance, Securities and Banking (DISB) and includes the Directors of the Department of Health (DOH) and Department of Mental Health (DMH) as additional members.
- C.1.2.18** **Medicaid** A state-administered health insurance program for low-income families and children, pregnant women, the elderly, people with disabilities, and in some states, other adults. The Federal government provides a portion of the funding for Medicaid and sets guidelines for the program. States also have choices in how they design their program, so Medicaid varies state by state and may have a different name in your state.
- C.1.2.19** **Medicaid Management Information System (MMIS)** refers to a system operated by the District's Fiscal Agent that supports the operation of the Medicaid program. MMIS includes the following types of sub-systems or files: recipient eligibility, Medicaid provider, claims processing, pricing, SURS, MARS, and encounter processing.
- C.1.2.20** **Medicare** A Federal health insurance program for people who are age 65 or older and certain younger people with disabilities. It also covers people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant, sometimes called ESRD). The program provides protection with an acute care focus under four parts: (1) Part A covers inpatient hospital services, post-hospital care in skilled nursing facilities and care in patients' homes; (2) Part B covers primarily physician and other outpatient services; (3) Part C covers Managed Care; and (4) Part D covers prescription drug coverage.
- C.1.2.21** **Non-Group Insurance** refers to commercial insurance policies purchased by individuals or families not affiliated with any group.
- C.1.2.22** **Office of Consumer Information and Insurance Oversight (OCIO)** office within the U.S. Department of Human Services dedicated to helping the Department implement many of the provisions of the Affordable Care Act that address private health insurance including ensuring compliance with the new insurance market rules, such as the prohibitions on rescissions and on pre-existing condition exclusions for children that take effect this year. The **OCIO** will oversee the new medical loss ratio rules and will assist states in reviewing insurance rates. It will provide guidance and oversight for the state-based insurance exchanges. It will also administer the temporary high-risk pool program and the early retiree reinsurance program, and compile and maintain data for an internet portal providing information on insurance options.

- C.1.2.23** **Passive Certification** refers to the process for certifying qualified health plans for inclusion in an Exchange whereby an Exchange establishes benchmark criteria and certifies all plans that meet that standard.
- C.1.2.24** **Pre-Existing Condition Insurance Plan (PCIP)** A new program created by the Affordable Care Act that will provide a health coverage option for individuals who have been uninsured for at least six months, have a pre-existing condition, and have been denied coverage (or offered insurance without coverage of the pre-existing condition) by a private insurance company. This program will provide coverage until 2014 when you will have access to affordable health insurance choices through an Exchange.
- C.1.2.25** **Quasi-Government Agency** is an agency or instrumentality of the District of Columbia Government with an independent governing body.
- C.1.2.26** **Social Security Administration (SSA)** is the US government agency provides economic assistance to persons faced with unemployment, disability, or agedness, financed by assessment of employers and employees.
- C.1.2.27** **Stakeholder** is an individual or entity with a vested interest in any or all of the policy decisions related to the implementation of a Health Insurance Exchange in the District of Columbia.
- C.1.2.28** **U.S. Department of Health and Human Services (HHS)** the United States federal department that administers all federal programs dealing with health and welfare, including Medicaid and Health Insurance Exchanges.
- C.1.2.29** **US Department of Homeland Security (DHS)** is the US government agency devoted to keeping the US safe from natural and man-made disaster. It includes agencies for citizenship and immigration services, customs and border protection, emergency response and recovery (FEMA), and science and technology research.

## **C.2** **BACKGROUND**

### **C.2.1** **DHCF MISSION**

The Department of Health Care Finance (DHCF) is the single state agency responsible for the implementation and administration of the District's Medicaid Program authorized under Title XIX of the Social Security Act. DHCF's mission is to improve health outcomes by providing access to comprehensive, cost-effective, and quality health care services for residents of the District of Columbia.

### **C.2.1** **AFFORDABLE CARE ACT**

- C.2.1.1** The District of Columbia continues to make strides to ensure that all residents have access to high quality health care. With over 93% of residents insured, the

District is second in the nation for providing health insurance coverage to its residents. Federal health reform legislation, known as the Affordable Care Act of 2010 (ACA) (Applicable Document #1), established a number of provisions for strengthening and expanding federal and state health care programs to increase options for coverage for millions of uninsured Americans. The centerpiece of reform involves the establishment of state Health Insurance Exchanges (Exchange) to create a new entity and provide the foundation for organizing the insurance market into a better-functioning market that improves choice and value for low and moderate income individuals, families, and small businesses. The Exchange is also intended to provide other functions including information on qualified available health plans, a web site and toll-free number, and integration with existing health care programs offered by the state.

**C.2.1.2** The Affordable Care Act authorized State Planning and Establishment Grants to help States establish health insurance exchanges. The grants were awarded by and will be administered by the U.S. Department of Health and Human Services (HHS) Office of Consumer Information and Insurance Oversight (OCII). The DHCF released a Request for Task Order Proposal (RFTOP) seeking technical assistance with the Exchange Planning and Establishment Grants (Applicable Document # 2).

## **C.2.2 DHCF AND THE DISTRICT HEALTH INSURANCE EXCHANGE**

**C.2.2.1** As the District agency responsible for administering the DC Medicaid and CHIP programs and other DC health care programs, DHCP (Applicable Document #3) is the lead agency for Exchange planning and implementation for the District.

**C.2.2.2** Because federal health reform Exchange legislation establishes novel and unique requirements with few examples in other states, the policy, planning, and implementation activities related to health insurance exchanges will require the availability of or ability to access a compliment of a new, highly sophisticated expertise including project management, policy development, financial modeling, actuarial assistance, health care industry and insurance expertise, data processing/information technology expertise, knowledge of public health insurance programs) and other relevant subject matter expertise as needed.

## **C.2.3 BACKGROUND RESEARCH AND INFORMATION**

The following background research and information is provided to assist the Contractor in the planning of the District's Exchange.

**C.2.3.1** In the fall of 2009, the Urban Institute conducted a health insurance phone survey on behalf of DHCF. Analysis of the 4,000 plus responses revealed the District's rate of uninsured to be approximately 6.2% and identified specific characteristics of both those with and without insurance. The findings of this survey can be found in Applicable Document #4.

**C.2.3.2** The RAND Corporation, Inc. prepared a working paper entitled Assessing Health and Health Care in the District of Columbia (Applicable Document #5). This document describes interim findings from a study of health and the health care service delivery system in the District of Columbia. Part 1 includes a comprehensive health needs assessment for DC and assesses the quality and accessibility of the District's health care delivery system for individuals with urgent or emergent medical needs. Part 2 of the report uses information from those assessments to identify and assess various policy options for improving the health care delivery system.

### **C.3 REQUIREMENTS**

The Contractor shall provide the District with the subject matter expertise to realize the successful implementation of Health Care Reform initiatives to best meet the needs of District residents. The Contractor shall provide the District support in at a minimum the following:

#### **C.3.1 AFFORDABLE CARE ACT TECHNICAL ASSISTANCE**

The Contractor shall provide the DHCF on-going technical assistance with the development and implementation of the District's requirements to satisfy the mandates described in the ACA (Applicable Document #1). Additionally, the Contractor shall monitor the District's compliance with all ACA guidelines. Specifically the Contractor shall provide at a minimum the following:

##### **C.3.1.1 ACA Comprehensive Review**

The Contractor shall conduct a thorough review of the ACA noting components that impact or have an effect on the District. The Contractor shall provide an ACA Comprehensive review document to include at a minimum the components of the ACA that the District must comply, a description of the requirement, initial, on-going, and final reporting and compliance requirements associated with the required components.

##### **C.3.1.1.2 Health Insurance Exchange**

The Contractor shall provide the DHCF, through the Contracting Officer's Technical Representative (COTR) identified in Section G.9.2, with the technical assistance required to conduct the analysis and assessment of Exchange components required to successfully develop and implement the District's Health Insurance Exchange (Exchange).

##### **C.3.1.1.2.1 District Exchange Planning Solicitation**

The Contractor shall provide the DHCF with the necessary review and analysis of the deliverables and work products to result from the District's planning and

implementation solicitation (Applicable Document #2). The Contractor's reviews shall be conducted to ensure that the District obtains the information required to make sound decisions regarding the District's Exchange. The Contractor shall at a minimum:

#### **C.3.1.1.2.1.1 Monitor the Exchange Detailed Project Management Plan**

The Contractor shall at a minimum provide the following in support of the monitoring of the Exchange Detailed Project Management Plan:

- a. Provide the COTR with at a minimum bi-weekly status reports of progress, problems, associated with the Exchange Detailed Project Management Plan task beginning and end dates;
- b. Notify the COTR when key milestones and deadlines become more than 48 hours overdue;
- c. Notify the COTR of potential issues preventing successful implementation of the Exchange implementation; and
- d. Monitor for timeliness the submission of deliverables.

#### **C.3.1.1.2.1.2 Stakeholder Engagement**

The Contractor shall attend and participate in the stakeholder engagement activities to result from the approved Stakeholder Engagement Plan. The Contractor shall ensure a comprehensive, all-inclusive, and transparent process guides the involvement of stakeholders in the development and policy development for the District's Exchange Strategic and Operational Plans. The Contractor shall at a minimum provide the COTR updates on the stakeholder involvement including the information identified in C.3.1.1.2.1.1 above in the bi-weekly status report and as needed when issues or problems arise.

#### **C.3.1.1.2.1.3 Exchange Strategic Plan**

The Contractor shall monitor the Exchange Strategic Plan to ensure the plan's timelines are met and tasks are completed as described in the approved Exchange Strategic Plan. The Contractor shall at a minimum provide the COTR updates on the Exchange Strategic Plan including the information identified in C.3.1.1.2.1.1 above in the bi-weekly status report and as needed when issues or problems arise.

#### **C.3.1.1.2.1.4 Exchange Operational Plan**

The Contractor shall monitor the Exchange Operational Plan to ensure the plan's timelines are met and tasks are completed as described in the approved Exchange Operational Plan. The Contractor shall at a minimum provide the COTR updates on the Exchange Operational Plan including the information identified in C.3.1.1.2.1.1 above in the bi-weekly status report and as needed when issues or problems arise.

**C.3.1.1.3 Exchange Lessons Learned and Best Practices**

The Contractor shall maintain up to date and accurate information concerning the development of legislation and lessons learned and best practices identified with respect to the implementation of other Exchanges around the country. The Contractor shall report monthly on identified lessons learned and best practices. The Contractor's Exchange Lessons Learned and Best Practices Report shall provide the following:

- a. Identification of states, entities reviewed;
- b. Identification of Lessons Learned/Best Practice and the application of each to the District's Exchange;
- c. States/Entities to be reviewed in the coming month; and
- d. Federal guidance and other information issued by the federal government.

**C.3.1.2 Other ACA Requirements**

The Contractor shall provide the District with the technical assistance with other components of the ACA as identified in C.3.1.1.

**C.3.2 District Health Care Reform**

The Contractor shall provide the District technical assistance and expertise designed to not only further the successful implementation of health care reform in the District but sustain health care reform leading to improved health outcomes for District residents. The Contractor shall provide at a minimum the following:

**C.3.2.1 Funding Opportunities**

The Contractor shall identify and prepare responses on behalf of the District for funding opportunities offered by the federal government or other entity regarding health care reform or any components of the ACA.

**C.3.2.2 DHCF Office of Innovation and Reform**

The Contractor shall assist in the design of the DHCF's Office of Innovation and Reform's structure to further the District's health care reform initiatives. The Contractor shall provide research based recommendations on issues including department size, functions, future roles and impact, and drafting staff position descriptions.

**C.3.2.3 Staff Development and Training**

The Contractor shall develop and conduct training and development actions regarding the department's health care initiatives.

**C.3.2.4 Communication Plan**

The Contractor shall develop and provide a Communication Plan to address the department's on-going communication strategy to keep stakeholders, internal and external, informed of the District's health care reform initiatives.

**C.3.3 SUPPORTING REQUIREMENTS**

The Contractor shall at a minimum provide the following requirements in support of the delivery of the required services:

**C.3.3.1 Meetings**

The Contractor shall attend bi-weekly meetings with the COTR and other designated DHCF staff to provide updates, present analysis, and other findings completed by the Contractor.

**C.3.3.2 Reporting Requirements****C.3.3.2.1 ACA Comprehensive Review**

The Contractor shall develop and submit an ACA Comprehensive Review as described in C.3.1.1.

**C.3.3.2.2 Bi-Weekly Status Reports**

The Contractor shall prepare and submit a Bi-Weekly Progress Report to include the following for the Exchange Detailed Project Management Plan (C.3.1.1.2.1.1), Stakeholder Engagement (C.3.1.1.2.1.2), Exchange Strategic Plan (C.3.1.1.2.1.3), and the Exchange Operational Plan (C.3.1.1.2.1.4):

- a. Provide the COTR with at a minimum bi-weekly status reports of progress, problems, associated with the Exchange Detailed Project Management Plan task beginning and end dates;
- b. Notify the COTR when key milestones and deadlines become more than 48 hours overdue;
- c. Notify the COTR of potential issues preventing successful implementation of the Exchange implementation; and
- d. Monitor for timeliness the submission of deliverables.

**C.3.3.2.3 Exchange Lessons Learned and Best Practices**

The Contractor shall develop and submit a monthly Exchange Lessons Learned and Best Practices report as described in C.3.1.1.3.

**C.3.3.2.4 Funding Opportunities**

The Contractor shall develop and submit information regarding health care reform initiatives as described in C.3.2.1.

**C.3.3.2.5 DHCF Office of Innovation and Reform**

The Contractor shall develop and submit information regarding the design and functions of the DHCF's Office of Innovation and Reform as described in C.3.2.2.  
C.3.2.2

**C.3.3.2.6 Staff Development and Training**

The Contractor shall develop and submit information regarding staff development and training on DGCF's health care reform initiatives as described in C.3.2.3.

**C.3.3.2.7 Communication Plan**

The Contractor shall develop a Communication Plan as described in C.3.2.4.

**SECTION D  
PACKAGING AND MARKING**

This section does not apply to this procurement.

## **SECTION E INSPECTION AND ACCEPTANCE**

### **E.1 INSPECTION OF WORK PERFORMED**

The inspection and acceptance requirements for the resultant Contract shall be governed by the Inspection of Services Clause in Section 7 of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007, Attachment J.1, if applicable.

### **E.2 RIGHT TO ENTER PREMISES**

**E.2.1** The Department of Health Care Finance or any authorized representative of the District of Columbia, the U.S. Department of Health and Human Services, the U.S. Comptroller General, the U.S. General Accounting Office, or their authorized representatives will, at all reasonable times, have the right to enter the Contractor's premises or such other places where duties under this contract are being performed to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor and all subcontractors shall provide reasonable access to all facilities and assistance to the District and federal representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay the services.

## SECTION F DELIVERIES OR PERFORMANCE

### F.1 TERM OF THE CONTRACT

The term of the Contract shall be for a period of one (1) year from date of award.

### F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

**F.2.1** The District may extend the term of the Contract for a period of two (2) one (1) year Option Periods by providing thirty (30) days written notice to Contractor before the expiration of the Contract; provided that the District shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the contract Close. The preliminary notice does not commit the District to an extension. Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Office prior to expiration of the Contract.

**F.2.2** The price for the Option Period shall be specified in the Contract. The exercise of the option to extend the contract is subject to the availability of funds at the time of the exercise of the option.

**F.2.3** The option to extend the term of the contract, as described above in section F.2.1, shall be included in each option contract.

**F.2.4** The total duration of the contract, including the exercise of any options under Section F.2 shall not exceed five (5) years.

### F.3 DELIVERABLES

Contractor shall perform the required services and tasks and develop and submit one (1) electronic copy of the following deliverables to the CA identified in Section G.9.2 in accordance with the due dates identified in the Deliverable Schedule, as described below. The Contractor shall provide hard copies of any deliverable upon request of the CA.

Deliverable No.	Deliverable	Due Date
1	ACA Comprehensive Review (C.3.1.1)	Within 30 days of Contract Award
2	Bi-Weekly Status Reports	Bi-Weekly
3	Exchange Lessons Learned and Best Practices Report (C.3.1.1.3)	Monthly
4	Funding Opportunities (C.3.2.1)	As Required

5	DHCF Office of Innovation and Reform (C.3.2.2)	Within 45 days from Contract Award
6	Staff Development and Training (C.3.2.3)	Within 60 days from Contract Award
7	Communication Plan (C.3.2.4)	Within 75 days from Contract Award

**F.3.1** Any reports required pursuant to Section H.12 of the Fifty One Percent (51%) District Residents New Hires Requirements and First Source Employment Agreement are to be submitted to the District as a deliverable. If the report is not submitted as part of the deliverables, final payment to Contractor shall not be paid.

## SECTION G CONTRACT ADMINISTRATION

### G.1 INVOICE PAYMENT

**G.1.1** The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

**G.1.2** The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

### G.2 INVOICE SUBMITTAL

**G.2.1** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer with concurrent copies to the CA specified in Section G.9.2. The address of the CFO is:

Accounts Payable  
Department of Health Care Finance  
64 New York Avenue  
Washington, DC 20002

**G.2.2** To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

- a. Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);
- b. Contract number and invoice number;
- c. Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- d. Other supporting documentation or information, as required by the Contracting Officer;
- e. Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- f. Name, title, phone number of person preparing the invoice;
- g. Name, title, phone number and mailing address of person (if different from the person identified in G.2.2 e above) to be notified in the event of a defective invoice; and
- h. Authorized signature.

**G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

**G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement (Attachment J.4) requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

**G.3.2** No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement (Attachment J.4) requirements.

**G.4 PAYMENT**

**G.4.1** The District will pay the Contractor monthly for the hours of service provided at the unit prices described in Section B.3

**G.4.2 RECOUPMENT**

**G.4.2.1** Contractor shall be responsible for the reimbursement of its fee for any claims that must be paid back to Medicaid as a result of Contractor's negligence in the performance of its services under the Contract. Contractor is liable to the District for no other sanction on account of claims or claim payments that are subject to recoupment.

**G.4.2.2** The District shall notify Contractor immediately in the event that any audit is conducted or contemplated by any entity, and shall afford Contractor the opportunity to attend and participate in related discussions.

**G.4.3 ELECTRONIC PAYMENTS**

**G.4.3.1** The District reserves the option to make payments to Contractor by wire, NACHA, or electronic transfer and will provide Contractor at least thirty (30) days notice prior to the effective date of any such change.

**G.4.3.2** Where payments are made by electronic funds transfer, the District will not be liable for any error or delay in transfer or indirect or consequential damages arising from the use of the electronic funds transfer process. Any changes or expenses imposed by the bank for transfers or related actions shall be borne by Contractor.

**G.4.4 RIGHT TO WITHHOLD PAYMENT**

**G.4.4.1** The District reserves the right to withhold or recoup funds from Contractor in addition to any other remedies allowed under the Contract or any policies and procedures.

**G.4.4.2** Payment will be withheld for Contractor late submissions of deliverables where such lateness is caused by circumstances within the reasonable control of the Contractor. Contractor shall receive payment when each deliverable is completed and approved by DHCF. If the deliverable has not been completed and submitted to DHCF by the deliverable due date and/or it is submitted, but DHCF does not approve the submission, DHCF may withhold payment until the deliverable has been inspected and accepted by DHCF.

**G.5 ASSIGNMENT OF CONTRACT PAYMENTS**

**G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

**G.5.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

**G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated \_\_\_\_\_, make payment of this invoice to (name and address of assignee).”

**G.6 THE QUICK PAYMENT CLAUSE****G.6.1 INTEREST PENALTIES TO CONTRACTORS**

**G.6.1.1** The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 et seq., for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a. the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b. the 5<sup>th</sup> day after the required payment date for an agricultural commodity;
- or
- c. the 15<sup>th</sup> day after the required payment date for any other item.

**G.6.1.2** Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

**G.6.2 PAYMENTS TO SUBCONTRACTORS**

**G.6.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b. Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**G.6.2.2** The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a. the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b. the 5<sup>th</sup> day after the required payment date for an agricultural commodity;
- or
- c. the 15<sup>th</sup> day after the required payment date for any other item.

**G.6.2.3** Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

**G.6.2.4** A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

**G.6.3 SUBCONTRACT REQUIREMENTS**

**G.6.3.1** The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

**G.7 CONTRACTING OFFICER (CO)**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

James H. Marshall  
Department of Health Care Finance  
825 North Capitol Street, NE 6<sup>th</sup> Floor  
Washington, DC 20002  
202 442-9106  
[iim.marshall@dc.gov](mailto:iim.marshall@dc.gov)

**G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

- G.8.1** The CO is the only person authorized to approve changes in any of the requirements of this contract.
- G.8.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.
- G.8.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

**G.9 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)**

- G.9.1** The COTR is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:
- G.9.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;
- G.9.1.2** Coordinating site entry for Contractor personnel, if applicable;
- G.9.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

**G.9.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

**G.9.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**G.9.2** The address and telephone number of the COTR is:

Brenda Emanuel  
Chief Administrative Officer  
Department of Health Care Finance  
825 North Capitol Street, 6<sup>th</sup> Floor  
Washington, DC 20002  
202 442-5988  
[brenda.emmanuel@dc.gov](mailto:brenda.emmanuel@dc.gov)

**G.9.3** The COTR shall NOT have the authority to:

- a. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
- b. Grant deviations from or waive any of the terms and conditions of the contract;
- c. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
- d. Authorize the expenditure of funds by the Contractor;
- e. Change the period of performance; or
- f. Authorize the use of District property, except as specified under the contract.

**G.9.4** The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

## **G.10 SUBCONTRACTS**

**G.10.1** Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government of the District of Columbia.

**G.10.2** The divisions or sections of any requirements related herein are not intended to control the Contractor in dividing the work among the subcontractors or to limit the work performed by any trade.

- G.10.3** The Contractor shall be as fully responsible to the Government of the District of Columbia for the acts and omissions of subcontractor and of persons employed by them as he is for the acts and omissions of persons directly employed by him.
- G.10.4** The Contractor shall coordinate the trades, subcontractor and material persons engaged upon his work.
- G.10.5** The Contractor shall, without additional expense to the Government of the District of Columbia, utilize the services of specialty subcontractors for those parts of the work which are specified to be performed by specialty subcontractors.
- G.10.6** The Government of the District of Columbia will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.
- G.10.7** The Contractor shall not subcontract any portion of the contract except with the prior written consent of the CO, or his authorized representatives, and such consent, when given, shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract. Request(s) for permission to subcontract any portion of the contract shall be in writing and accompanied by: (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the Contractor that the Labor Standards Provisions set forth in this contract shall apply to labor performed on all work encompassed by the request(s). The request(s) also shall provide the following information:
- G.10.7.1** Subcontractors name, address, telephone number, and Federal Social Security Number used on the Employers Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- G.10.7.2** Estimated dollar amount of the subcontract.
- G.10.7.3** Estimated starting and completion dates of the subcontract.
- G.10.7.4** The subcontractor approval request form included herein should be used to request approval of subcontractor on this project. The form should be completed for each subcontractor requested for approval and submitted to the CO. Copies of these forms are available upon request from the COTR.
- G.10.8** Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

**G.11 PAYMENT ERRORS**

**G.11.1** A payment error discovered by the District will be subject to repayment or adjustment by the District making a corresponding decrease in a current Contractor's payment or by making an additional payment by the District to the Contractors Provision for Adjustment of Payment.

## **SECTION H SPECIAL CONTRACT REQUIREMENTS**

### **H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

**H.1.1** For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 (Attachment J.4) and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

**H.1.1.1** at least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

**H.1.2** The Contractor shall negotiate an Employment Agreement with the DOES for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified applicants, trainees, and other workers in the implementation of employment goals contained in this clause.

### **H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

The Contractor shall be bound by the Wage Determination No.: 2005-2103, Revision No. 10, dated June 15, 2010, issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. 351 et seq.) and incorporated herein as Attachment J.2 of this contract. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

### **H.3 PUBLICITY**

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

#### **H.4 FREEDOM OF INFORMATION ACT**

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA designated in subsection G.9 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the CA will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

#### **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT**

**H.5.1** The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code, sec. 2-219.01 et seq. (“First Source Act”) (Attachment J.4).

**H.5.2** The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Attachment J.4) in which the Contractor shall agree that:

- a. The first source for finding employees to fill all jobs created in order to perform this contract shall be the Department of Employment Services (“DOES”); and
- b. The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement (Attachment J.4) shall be the First Source Register.

**H.5.3** The Contractor shall submit to DOES, no later than the 10th each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifies its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

- a. Number of employees needed;
- b. Number of current employees transferred;

- c. Number of new job openings created;
- d. Number of job openings listed with DOES;
- e. Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- f. Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
  - 1. Name;
  - 2. Social Security number;
  - 3. Job title;
  - 4. Hire date;
  - 5. Residence; and
  - 6. Referral source for all new hires.

**H.5.4** If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

**H.5.5** With the submission of the Contractor's final request for payment from the District, the Contractor shall:

- a. Document in a report to the Contracting Officer its compliance with the section H.5.4 of this clause; or
- b. Submit a request to the Contracting Officer for a waiver of compliance with section H.5.4 and include the following documentation:
  - 1. Material supporting a good faith effort to comply;
  - 2. Referrals provided by DOES and other referral sources;
  - 3. Advertisement of job openings listed with DOES and other referral sources; and
  - 4. Any documentation supporting the waiver request pursuant to section H.5.6.

**H.5.6** The Contracting Officer may waive the provisions of section H.5.4 if the Contracting Officer finds that:

- a. A good faith effort to comply is demonstrated by the Contractor;
- b. The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpepper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- c. The Contractor enters into a special workforce development training or placement arrangement with DOES; or

- d. DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

**H.5.7** Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.5.5 and H.5.6, the Contracting Officer shall determine whether the Contractor is in compliance with section H.5.4 or whether a waiver of compliance pursuant to section H.5.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the CA.

**H.5.8** Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.5.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in the contract any decision of the Contracting Officer pursuant to this section H.5.8.

**H.5.9** The provisions of sections H.5.4 through H.5.8 do not apply to nonprofit organizations.

**H.6 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

During the performance of the contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. 12101 et seq.

**H.7 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended**

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. See 29 U.S.C. 794 et seq.

**H.8 WAY TO WORK AMENDMENT ACT OF 2006**

**H.8.1** Except as described in Section H.8.8 below, Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 9, 2006, (D.C. Law 16-118, D.C. Official Code § 2-220.01 *et seq.*) "Living Wage Act of 2006" for contracts for services in the amount of one-hundred thousand dollars (\$100,000) or more in a twelve (12) month period.

- H.8.2** Contractor shall pay its employees and subcontractors who perform services under the Contract no less than the current living wage described in Attachment J.5.
- H.8.3** Contractor shall include in any subcontract for fifteen thousand dollars (\$15,000) or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.
- H.8.4** The Department of Employment Services may adjust the living wage annually.
- H.8.5** Contractor shall provide a copy of the Fact Sheet attached as Attachment J.6 to each employee and subcontractor who performs services under the contract. Contractor shall also post the Notice attached as Attachment J.5 in a conspicuous place in its place of business. Contractor shall include in any subcontract for fifteen thousand dollars (\$15,000) or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.
- H.8.6** Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for fifteen thousand dollars (\$15,000) or more under the Contract.
- H.8.7** The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code § 32-1301 *et seq.*
- H.8.8** The requirements of the Living Wage Act of 2006 do not apply to:
- a. Contracts or other agreements that are subject to higher wage level determinations required by federal law;
  - b. Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
  - c. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
  - d. Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
  - e. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
  - f. An employee under twenty-two (22) years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than twenty-five (25) hours per

week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;

- g. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District; and
- h. Employees of nonprofit organizations that employ not more than fifty (50) individuals and qualify for taxation exemption pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

**H.8.9** The Mayor may exempt a Contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

## **H. 9 MANDATORY SUBCONTRACTING REQUIREMENTS**

**H.9.1** For contracts in excess of \$250,000, at least 35% of the dollar volume shall be subcontracted to businesses certified as certified small business enterprises by the District's Department of Small Local Business Development; provided, however, that the costs of materials, goods and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

**H.9.2** If there are insufficient qualified small business enterprises to completely fulfill the requirement of the preceding paragraph, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

**H.9.3** A prime contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1 and H.9.2.

## **H.10 SUBCONTRACTING PLAN**

For the base year of the Contract, Contractor shall prepare a subcontracting plan as a prime contractor and shall subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.9. Once the plan is approved by the contracting officer, changes to the plan will only occur with the prior written approval of the contracting officer and the Director of DSLBD. Each subcontracting plan shall include the following:

**H.10.1** A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;

- H.10.2** A statement of the dollar value of the proposal that pertains to the subcontracts to be performed by the SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.10.3** The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;
- H.10.4** The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;
- H.10.5** A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for subcontracts;
- H.10.6** In all subcontracts that offer further subcontracting opportunities, assurances that the prime contractor will include a statement, approved by the Contracting Officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;
- H.10.7** Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the District to determine the extent of compliance by the prime contractor with the subcontracting plan;
- H.10.8** A list of the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and assurances that the prime contractor will make such records available for review upon the District's request; and
- H.10.9** A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises and to award subcontracts to them.

**H.11 COMPLIANCE REPORTS**

By the 21<sup>st</sup> of every month following the execution of the contract, the prime contractor shall submit to the contracting officer and the Director of DSLBD a compliance report detailing the contractor's compliance, for the preceding month, with the subcontracting requirements of the contract. The monthly compliance report shall include the following information:

- H.11.1** The dollar amount of the contract or procurement;
- H.11.2** A brief description of the goods procured or the services contracted for;

- H.11.3** The name and address of the business enterprise from which the goods were procured or services contracted;
- H.11.4** Whether the subcontractors to the contract are currently certified business enterprises;
- H.11.5** The dollar percentage of the contract or procurement awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;
- H.11.6** A description of the activities the contractor engaged in, in order to achieve the subcontracting requirements set forth in section H.9; and
- H.11.7** A description of any changes to the activities the contractor intends to make by the next month to achieve the requirements set forth in section H.9.
- H.12** **ENFORCEMENT AND PENALTIES FOR BREACH OF SUBCONTRACTING PLAN**
- H.12.1** If during the performance of this contract, the contractor fails to comply with its approved subcontracting plan, and the contracting officer determines the contractor's failure to be a material breach of the contract, the contracting officer shall have cause to terminate the contract under the default clause of the Standard Contract Provisions (Attachment J.1).
- H.12.2** There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.
- H.13** **DISTRICT RESPONSIBILITIES**
- H.13.1** The District through the COTR will monitor the Contractor's performance and review all required contract deliverables.
- H.13.2** The District, through the COTR, will provide continuous contract performance evaluations and program monitoring.
- H.13.3** The District, through the COTR, will maintain adequate liaison and cooperation with the Contractor.
- H.13.4** The District will attend required meetings with the Contractor to discuss issues, changes, deliverables' status, and other specific agenda items.

**H.13.5 REVIEW AND APPROVAL OF SUBCONTRACT(S)**

**H.13.5.1** The Contracting Officer will notify the Contractor, in writing, of its approval or disapproval of a proposed model subcontract for service providers within fifteen (15) business days of receipt of the proposed subcontract and supporting documentation required by the District. The District will specify the reasons for any disapproval, which shall be based upon review of the provisions of this Contract, the Contractor's proposal, and District or federal law or regulations.

**H.13.5.2** A proposed subcontract may be awarded by the Contractor if COTR fails to notify the Contractor within the fifteen (15) business day time limit.

**H.13.5.3** The District may utilize any remedy which it deems appropriate if a Contractor executes a subcontract for services furnished under this Contract that is materially different from the model subcontract approved by the District.

**H.13.5.4** The District may require the Contractor to furnish additional information relating to the ownership of the subcontractor, the subcontractor's ability to carry out the proposed obligations under the subcontract, and the procedures to be followed by the Contractor to monitor the execution of the subcontract.

**H.13.5.5** The District may terminate its relationship with the Contractor if the District determines that the termination or expiration of a subcontract materially affects the ability of the Contractor to carry out its responsibility under this contract.

**H.14 CONTRACTOR RESPONSIBILITIES****H.14.1 STAFF AND SUPERVISION**

The Contractor shall provide the staff and supervision required.

**H.14.2 RESERVED****H.14.3 RESERVED**

representatives to maintain on a confidential basis information concerning the Contractor's relations and operations as well as any other information compiled or created by Contractor which is proprietary to Contractor and which Contractor identifies as proprietary to the District in writing.

#### **H.14.4 ALLOWABLE SUBCONTRACTING REQUIREMENTS**

**H.14.4.1** The Contractor shall ensure that all activities carried out by any subcontractor conforms to the provisions of this Contract.

**H.14.4.2** It is the responsibility of the Contractor to ensure its subcontractors are capable of meeting the reporting requirements under this Contract and, if they cannot, the Contractor is not relieved of the reporting requirements.

#### **H.14.4.3 Termination of Subcontract**

The Contractor shall notify the District Contracting Officer, in writing, of the termination of any subcontract for the provision of services, including the arrangements made to ensure continuation of the services covered by the terminated subcontract, not less than forty-five (45) days prior to the effective date of the termination, unless immediate termination of the contract is necessary to protect the health and safety of Enrollees or prevent fraud and abuse. In such an event, the Contractor shall notify COTR immediately upon taking such action.

**H.14.4.3.1** If the District determines that the termination or expiration of a subcontract materially affects the ability of the Contractor to carry out its responsibility under this contract; the District may terminate this Contract.

**H.14.4.3.2** The Contractor shall ensure subcontracts contain a provision that requires subcontracts to contain all provisions of the Contractor's contract with the District and that the subcontractor look solely to Contractor for payment for services rendered.

#### **H.14.5 FRAUD AND ABUSE PROVISIONS AND PROTECTIONS**

**H.14.5.1** Cooperation with the District

**H.14.5.1.1** This contract is subject to all District and federal laws and regulations relating to fraud and abuse in health care and the Medicaid program.

**H.14.5.1.2** The Contractor shall cooperate and assist the District of Columbia and any District or federal agency charged with the duty of identifying, investigating, or prosecuting suspected fraud and abuse.

**H.14.5.1.3** The Contractor shall provide originals and/or copies of all records and information requested and allow access to premises and provide records to COTR or its authorized agent(s), CMS, the U.S. Department of Health and Human

Services, FBI and the District's Medicaid Fraud Control Unit. All copies of records shall be provided free of charge.

**H.14.5.1.4** The Contractor shall be responsible for promptly reporting suspected fraud, abuse, or violation of the terms of this contract to COTR via the Contracting Officer, taking prompt corrective actions consistent with the terms of any subcontract, and cooperating with COTR investigations.

**H.14.5.1.5** The Contractor shall allow the District of Columbia Medicaid Fraud Unit or its representatives to conduct private interviews of Contractor's employees, subcontractors, and their employees, witnesses, and patients. The Contractor shall honor requests for information in the form and the language specified.

**H.14.5.1.6** The Contractor's shall ensure that its employees and its subcontractors and their employees shall cooperate fully and be available in person for interviews, consultation grand jury proceedings, pre-trial conference, hearings, trial and in any other process.

**H.14.6**        **PROHIBITING AFFILIATIONS WITH INDIVIDUALS DEBARRED BY FEDERAL AGENCIES**

**H.14.6.1** In accordance with the Social Security Act (Section 1932(d) (1), as amended by the Balanced Budget Act of 1997) (Applicable Document # 6) or Executive Order, the Contractor may not knowingly have a director, officer, partner, or person, who has been debarred or suspended by the federal government, with more than 5% equity, or have an employment, consulting, or other contract with such a person for the provision of items and services that are significant and material to the entity's contractual obligation with the District.

**H.14.6.2** The Contractor shall notify COTR within three (3) days of the time it receives notice that action is being taken against Contractor, any person defined under the provisions of section 1128(a) or (b) of the Social Security Act (42 USC 1320 a-7) or any subcontractor which could result in exclusion, debarment, or suspension of the Contractor or a subcontractor from the Medicaid program, or any program listed in Executive Order 12549.

**H.14.7**        **PROHIBITED INFORMATION AND ACTIVITIES**

**H.14.7.1** The Contractor and their Subcontractors are prohibited from distribution the following information or conducting the following activities:

- a. Materials that mislead or falsely describe covered or available services;
- b. Materials which mislead or falsely describe the Contractor's provider participation network, the participation or availability of

- network providers, the qualifications and skills of network providers (including their bilingual skills), or the hours and locations of network services;
- c. Offering gifts of more than de minimum value, cash, promotions, and/or other insurance products which are designed to induce enrollment by individual beneficiaries;
  - d. Compensation arrangements with marketing personnel which utilize any type of payment structure in which compensation is tied to the number (or classes) of persons who enroll;
  - e. Direct soliciting of members, either by mail, door-to-door or telephonic, of prospective Enrollees; and
  - f. Engaging in any marketing activity or using any marketing material not approved in advance by the District.

#### **H.14.8 ADVISORY AND ASSISTANCE SERVICES**

This contract is a “nonpersonal services contract”. It is therefore, understood and agreed that the Contractor and the Contractor’s employees: (1) shall perform the services specified herein as independent contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall , pursuant to the government’s right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the contract objectives.

#### **H.14.9 HIPAA COMPLIANCE – BUSINESS ASSOCIATE AGREEMENT**

**H.14.9.1** DHCF is a “Covered Entity” as that term is defined in the Privacy Rule and Security Rules and Contractor, as a recipient of Protected Health Information and/or Electronic Protected Health Information from DHCF, is a “Business Associate” as that term is defined in the Privacy and Security Rules.

#### **H.14.9.2 Definitions**

The following definitions shall apply to this Section:

**H.14.9.2.1** Administrative Safeguards: administrative actions, policies, and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the Covered Entity's workforce in relation to the protection of that information.

- H.14.9.2.2** Business Associate: a person or entity, who performs, or assists in the performance of a function or activity on behalf of a Covered Entity or an organized health care organization in which the Covered Entity participates, involving the use or disclosure of individually identifiable health information, other than in the capacity of a workforce member of such Covered Entity or organization. A business associate is also any person or organization that provides, other than in the capacity of a workforce member of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation, or financial services to or for the Covered Entity and receives individually identifiable health information from a Covered Entity or another business associate on behalf of a Covered Entity. In some instances, a Covered Entity may be a business associate of another Covered Entity.
- H.14.9.2.3** Covered Entity: a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C.F.R. Parts 160 and 164 of the Privacy and Security Rules. Covered Entity is also referred to as Covered Agency within this HIPAA Compliance Clause. With respect to this Compliance Clause, Covered Entity shall also include the designated health care components of a hybrid entity.
- H.14.9.2.4** Data Aggregation: with respect to Protected Health Information created or received by a business associate in its capacity as the business associate of a Covered Entity, the combining of such Protected Health Information by the business associate with the Protected Health Information received by the business associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- H.14.9.2.5** Designated Record Set: a group of records maintained by or for the Covered Entity that is:
- a. The medical records and billing records about individuals maintained by or for a covered health care provider;
  - b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
  - c. Used, in whole or in part, by or for the Covered Entity to make decisions about individuals.
- H.14.9.2.6** HIPAA: the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, codified at 42 USCA 1320d, et.seq. and its implementing regulations at 45 C.F.R. Parts 160, 162, and 164 (Attachment J.8).
- H.14.9.2.7** **Electronic Media:**
- H.14.9.2.7.1** Electronic storage media including memory devices in computers (hard

drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or

- H.14.9.2.7.2** Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.
- H.14.9.2.8** Electronic Protected Health Information: Protected Health Information which is transmitted by Electronic Media (as defined herein) or maintained in Electronic Media.
- H.14.9.2.9** Health Care: care services, or services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:
- H.14.9.2.9.1** Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
- H.14.9.2.9.2** Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.
- H.14.9.2.10** Health Care Components: a component or a combination of components of a hybrid entity designated by a hybrid entity in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). Health Care Components must include non-covered functions that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.
- H.14.9.2.11** “Health Care Operations: shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.
- H.14.9.2.12** Hybrid Entity: a single legal entity that is a Covered Entity and whose business activities include both covered and non-covered functions, and that designates health care components in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). A Hybrid Entity is required to designate as a health care component, any other components of the entity that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.

- H.14.9.2.13** Individual: the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- H.14.9.2.14** Individually Identifiable Health Information: a subset of health information, including demographic information collected from an individual, and:
- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
  - b. Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual;
  - c. Identifies the individual; or
  - d. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- H.14.9.2.15** National Provider Identifier (NPI) Rule: the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.
- H.14.9.2.16** Physical Safeguards: security measures to protect a Covered Entity's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- H.14.9.2.17** Privacy Official: person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Privacy Policies and Procedures, and for overseeing full compliance with the Privacy Rule, and other applicable federal and District of Columbia privacy laws.
- H.14.9.2.18** Privacy Officer: person designated by the Privacy Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District's Privacy policies and procedures as well as overseeing full compliance with the Covered Agency's Privacy Policies and Procedures, the Privacy Rule, and other applicable federal and District of Columbia privacy laws. The Covered Agency's privacy officer will follow the guidance of the District's Privacy Official, and shall be responsive to and report to the District's Privacy Official.
- H.14.9.2.19** Privacy Rule: Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- H.14.9.2.20** Protected Health Information: individually identifiable health information that is:
- a. Transmitted by electronic media;
  - b. Maintained in electronic media;
  - c. Transmitted or maintained in any other form or medium;

- d. Limited to the information created or received by the Business Associate from or on
- e. behalf of the Covered Entity; and
- f. Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R.
- g. §160.103.

**H.14.9.2.21** Record: any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Covered Entity.

**H.14.9.2.22** Required By Law: same meaning as the term "required by law" in 45 C.F.R. § 164.103.

**H.14.9.2.23** Secretary: the Secretary of the United States Department of Health and Human Services or his or her designee.

**H.14.9.2.24** Security Incident: attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

**H.14.9.2.25** Security Official: person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Security policies and procedures as required by the Security Rule and oversee full compliance the District's Security policies and procedures, as well as other applicable federal and District of Columbia security law.

**H.14.9.2.26** Security Officer: person designated by the Security Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District Security Rule policies and procedures as well as overseeing full compliance with the Covered Agency's Security Policies and Procedures, the Security Rule, and other applicable federal and District of Columbia security law(s). The Covered Agency's security officer will follow the guidance of the District's Security Official, and shall be responsive to and report to the District's Security Official.

**H.14.9.2.27** Security Rule: the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.

**H.14.9.2.28** Technical Safeguards: the technology and the policies and procedures for its use that protect electronic protected health information and control access.

**H.14.9.2.29** Workforce: employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or business associate, is under the

direct control of such entity, whether or not they are paid by the Covered Entity or business associate.

### **H.14.9.3 Obligations and Activities of Business Associate**

**H.14.9.3.1** The Business Associate agrees not to use or disclose Protected Health Information and Electronic Protected Health Information other than as permitted or required by this HIPAA Compliance Clause or as Required by Law.

**H.14.9.3.2** The Business Associate agrees to use commercially reasonable efforts and appropriate safeguards to maintain the security of the Protected Health Information and Electronic Protected Health Information and to prevent use or disclosure of such Protected Health Information other than as provided for by this Compliance Clause.

**H.14.9.3.3** The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that are known to the Business Associate of a use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate in violation of the requirements of this Compliance Clause.

**H.14.9.3.4** The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the Protected Health Information and Electronic Protected Health Information not permitted or required by this HIPAA Compliance Clause to the District Privacy Official or the DHCF Privacy Officer immediately, but no later than (10) days from the time the Business Associate becomes aware of such unauthorized use or disclosure.

**H.14.9.3.5** The Business Associate agrees to ensure that any workforce member or any agent, including a subcontractor, agrees to the same restrictions and conditions that apply through this Compliance Clause with respect to Protected Health Information and Electronic Protected Health Information received from the Business Associate, Protected Health Information and Electronic Protected Health Information created by the Business Associate, or Protected Health Information and Electronic Protected Health Information received by the Business Associate on behalf of the Covered Entity.

**H.14.9.3.6** The Business Associate agrees to provide access, at the request of the Covered Entity or an Individual, at a mutually agreed upon location, during normal business hours, and in a format as directed by the District Privacy Official or the DHCF Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, rules and regulations, to Protected Health Information in a Designated Record Set, to the Covered Entity or an Individual, in compliance with applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.14. Individual's Information Rights - Access, attached hereto as Exhibit A and incorporated by

reference, and within five (5) business days of the request to facilitate the District's compliance with the requirements under 45 C.F.R. §164.524.

- H.14.9.3.7** The Business Associate agrees to make any amendment(s) to the Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 in a format or as directed by the District Privacy Official or the DHCF Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, in compliance with applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.15 Individual's Information Rights, attached hereto as Exhibit B and incorporated by reference, and within five (5) business days of the directive in order to facilitate the District's compliance with the requirements under 45 C.F.R. §164.526.
- H.14.9.3.8** The Business Associate agrees to use the standard practices of the Covered Entity to verify the identification and authority of an Individual who requests the Protected Health Information in a Designated Record Set of a recipient of services from or through the Covered Entity. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.25 Standard Procedure, attached hereto as Exhibit C and incorporated by reference.
- H.14.9.3.9** The Business Associate agrees to record authorizations and log such disclosures of Protected Health Information and Electronic Protected Health Information and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and applicable District of Columbia laws, rules and regulations. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Administration Privacy Policy Operations Manual, Policy Number VII.27 Standard Procedures attached hereto as Exhibit D and incorporated by reference.
- H.14.9.3.10** The Business Associate agrees to provide to the Covered Entity or an Individual, within five (5) business days of a request at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or the DHCF Privacy Officer and the duly authorized Business Associate workforce member, information collected in accordance with Paragraph (i) of this Section above, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 C.F.R. § 164.528, and applicable District of Columbia laws, rules and regulations. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual; Policy Number IV.16 Individual's Information Rights - attached hereto as Exhibit E and incorporated by reference.

- H.14.9.3.11** The Business Associate agrees to make internal practices, books, and records, including policies and procedures, and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the Business Associate, or created, or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or to the Secretary, within five (5) business days of their request and at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or the DHCf Privacy Officer and the duly authorized Business Associate workforce member, or in a time and manner designated by the Secretary, for purposes of the Secretary in determining compliance of the Covered Entity with the Privacy Rule and Security Rule.
- H.14.9.3.12** The Business Associate may aggregate Protected Health Information in its possession with the Protected Health Information of other Covered Entities that Business Associate has in its possession through its capacity as a Business Associate to said other Covered Entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose Protected Health Information of one Covered Entity to another Covered Entity absent the explicit written authorization and consent of the Privacy Officer or a duly authorized workforce member of the Covered Entity.
- H.14.9.3.13** Business Associate may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b). Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this HIPAA Compliance Clause.
- H.14.9.4 Permitted Uses and Disclosures by the Business Associate**
- H.14.9.4.1** Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if same activity were performed by the Covered Entity or would not violate the minimum necessary policies and procedures of the Covered Entity.
- H.14.9.4.2** Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- H.14.9.4.3** Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may disclose Protected Health Information and Electronic Protected

Health Information for the proper management and administration of the Business Associate, provided that the disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used, or further disclosed, only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it has knowledge that the confidentiality and security of the information has been breached.

**H.14.9.4.4** Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

**H.14.9.4.5** Business Associate may use Protected Health Information and Electronic Protected Health Information to report violations of the Law to the appropriate federal and District of Columbia authorities, consistent with 45 C.F.R. § 164.502(j)(1).

**H.14.9.5 Additional Obligations of the Business Associate**

**H.14.9.5.1** Business Associate shall submit a written report to the Covered Entity that identifies the files and reports that constitute the Designated Record Set of the Covered Entity. Business Associate shall submit said written report to the Privacy Officer no later than thirty (30) days after the commencement of the HIPAA Compliance Clause. In the event that Business Associate utilizes new files or reports which constitute the Designated Record Set, Business Associate shall notify the Covered Entity of said event within thirty (30) days of the commencement of the file's or report's usage. The Designated Record Set file shall include, but not be limited to the identity of the following:

- a. Name of the Business Associate of the Covered Entity;
- b. Title of the Report/File;
- c. Confirmation that the Report/File contains Protected Health Information (Yes or No);
- d. Description of the basic content of the Report/File;
- e. Format of the Report/File (Electronic or Paper);
- f. Physical location of Report/File;
- g. Name and telephone number of current member(s) of the workforce of the Covered Entity or other District of Columbia Government agency responsible for receiving and processing requests for Protected Health Information; and
- h. Supporting documents if the recipient/personal representative has access to the Report/File.

- H.14.9.5.2** Business Associate must provide assurances to the Covered Entity that it will continue to employ sufficient administrative, technical and physical safeguards, as described under the Security Rule, to protect and secure (the Covered Entity's) EPHI entrusted to it. These safeguards include:
- H.14.9.5.2.1** The Business Associate agrees to develop, maintain, implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that the Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity.
  - H.14.9.5.2.2** The Business Associate agrees to ensure that any agents or subcontractors of the Business Associate also agree to implement the appropriate security safeguards.
  - H.14.9.5.2.3** The Business Associate agrees to report to the Covered Entity any security incident of which it becomes aware, including any attempts to access EPHI, whether those attempts were successful or not.
  - H.14.9.5.2.4** This Business Associate Agreement may be terminated if the Covered Entity determines that the business associate has materially breached this Compliance Clause, consistent with the terms and conditions outlined in Section 9, Term and Termination.
  - H.14.9.5.2.5** The Business Associate agrees to make all policies and procedures, and documents relating to security, available to the Covered Entity or Secretary of HHS for the purposes of determining the Covered Entity's compliance with the Privacy and Security Rules. Notwithstanding the above, Business Associate has identified some security policies and procedures as confidential and which do not get distributed to third parties. In the event the Covered Entity or Secretary of HHS makes a request for such security policies and procedures, Business Associate will work with the Covered Entity and the Secretary of HHS to arrange a meeting at the Business Associate's premises, at a time and place mutually agreeable to the parties involved, to view such security policies and procedures.
  - H.14.9.5.2.6** This Compliance Clause continues in force for as long as the Business Associate retains any access to the Covered Entity's EPHI.
- H.14.9.6**        **Sanctions**
- H.14.9.6.1** Business Associate agrees that its workforce members, agents and subcontractors who violate the provisions of the Privacy Rule, the Security Rule or other applicable federal or District of Columbia privacy law will be subject to discipline in accordance with Business Associate's disciplinary rules and applicable collective bargaining agreements. Business Associate agrees to impose sanctions consistent with Business Associate's personnel policies and procedures and

applicable collective bargaining agreements with respect to its workforce members, agents, employees and subcontractors.

**H.14.9.6.2** Members of the Business Associate Workforce who are not employed by Business Associate are subject to the policies and applicable sanctions for violation of District of Columbia Privacy and Security policies and procedures as set forth in this Compliance Clause.

**H.14.9.6.3** In the event Business Associate imposes sanctions against any member of its workforce, agents and subcontractors for violation of the provisions of the Privacy and Security Rules or other applicable federal or District of Columbia Privacy and Security laws, regulations, and policies and procedures, the Business Associate shall inform the District Privacy and Security Officials or the DHCF Privacy and Security Officers of the imposition of sanctions.

**H.14.9.7**      **Obligations of the Covered Entity**

**H.14.9.7.1** The Covered Entity shall notify the Business Associate of any limitation(s) in its Notice of Privacy Practices of the Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

**H.14.9.7.2** The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to the use or disclosure of Protected Health Information and Electronic Protected Health Information, to the extent that such changes may affect the use or disclosure of Protected Health Information by the Business Associate.

**H.14.9.7.3** The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information and Electronic Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

**H.14.9.8**      **Permissible Requests by Covered Entity**

**H.14.9.8.1** Covered Entity shall not request the Business Associate to use or disclose Protected Health Information and Electronic Protected Health Information in any manner that would not be permissible under the Privacy Rule and the Security Rule if done by the Covered Entity.

**H.14.9.9**      **Representations and Warranties**

**H.14.9.9.1** The Business Associate represents and warrants to the Covered Entity:

- H.14.9.9.1.1** That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this HIPAA Compliance Clause and it, its employees, agents, subcontractors, representatives and members of its workforce are licensed and in good standing with the applicable agency, board, or governing body to perform its obligations hereunder, and that the performance by it of its obligations under this HIPAA Compliance Clause has been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws;
- H.14.9.9.1.2** That it, its employees, agents, subcontractors, representatives and members of its workforce are in good standing with the District of Columbia, that it, its employees, agents, subcontractors, representatives and members of its workforce will submit a letter of good standing from the District of Columbia, and that it, its employees, agents, subcontractors, representatives and members of its workforce have not been de-barred from being employed as a contractor by the federal government or District of Columbia;
- H.14.9.9.1.3** That neither the execution of this HIPAA Compliance Clause, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. The Business Associate represents and warrants to the Covered Entity that it will not enter into any agreement the execution or performance of which would violate or interfere with this HIPAA Compliance Clause;
- H.14.9.9.1.4** That it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition;
- H.14.9.9.1.5** That all of its employees, agents, subcontractors, representatives and members of its workforce, whose services may be used to fulfill obligations under this HIPAA Compliance Clause are or shall be appropriately informed of the terms of this HIPAA Compliance Clause and are under legal obligation to the Business Associate, by contract or otherwise, sufficient to enable the Business Associate to fully comply with all provisions of this HIPAA Compliance Clause. Modifications or limitations that the Covered Entity has agreed to adhere to with regard to the use and disclosure of Protected Health Information and Electronic Protected Health Information of any individual that materially affects or limits the uses and disclosures that are otherwise permitted under the Privacy Rule and Security Rule will be communicated to the Business Associate, in writing, and in a timely fashion;

- H.14.9.9.1.6** That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement;
- H.14.9.9.1.7** That neither the Business Associate, nor its shareholders, members, directors, officers, agents, subcontractors, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or District healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or District law (including without limitation following a plea of *nolo contendere* or participation in a first offender deferred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to:
- a. The neglect or abuse of a patient;
  - b. The delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or District healthcare program;
  - c. Fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, District or local government agency;
  - d. The unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or
- H.14.9.9.1** Interference with or obstruction of any investigation into any criminal offense described in H.23.9.1.7 .1 through H.23.9.1.7 .4 above.
- H.14.9.9.2** The Business Associate further agrees to notify the Covered Entity immediately after the Business Associate becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.
- H.14.9.10 Term and Termination**
- H.14.9.10.1** Term
- H.14.9.10.1.1**The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award.
- H.14.9.10.1.2**The requirements of this HIPAA Compliance Clause shall terminate when:

All of the Protected Health Information and Electronic Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is

confidentially destroyed or returned to the Covered Entity within five (5) business days of its request, with the Protected Health Information returned in a format mutually agreed upon by and between the Privacy and Security Officials and/or Privacy and Security Officers or their designees, when applicable, and the appropriate and duly authorized workforce member of the Business Associate; or,

If it is infeasible to return or confidentially destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section and communicated to the appropriate District personnel, whether the Privacy and Security Officials and/or Privacy and Security Officers or their designees, when applicable.

#### **H.14.9.10.2 Termination for Cause**

**H.14.9.10.2.1** Upon the Covered Entity's knowledge of a material breach of this HIPAA Compliance Clause by the Business Associate, the Covered Entity shall either:

**H.14.9.20.2.1.1** Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Contract if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;

**H.14.9.20.2.1.2** Immediately terminate the Contract if the Business Associate breaches a material term of this HIPAA Compliance Clause and a cure is not possible; or

**H.14.9.20.2.1.3** If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

#### **H.14.9.10.3 Effect of Termination**

**H.14.9.10.3.1** Except as provided in paragraph (ii) of this section, upon termination of the Contract, for any reason, the Business Associate shall return in a mutually agreed upon format or confidentially destroy all Protected Health Information received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity within five (5) business days of termination. This provision shall apply to Protected Health Information that is in the possession of ALL subcontractors, agents or workforce members of the Business Associate. The Business Associate shall retain no copies of Protected Health Information and Electronic Protected Health Information in any media form.

**H.14.9.10.3.2** In the event that the Business Associate determines that returning or destroying the Protected Health Information and Electronic Protected Health Information is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or confidential destruction infeasible.

**H.14.9.10.3.3** Upon determination by the DHCF Privacy and Security Officer that the return or confidential destruction of the Protected Health Information is infeasible, the

Business Associate shall extend the protections of this HIPAA Compliance Clause to such Protected Health Information and Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information and Electronic Protected Health Information to those purposes that make the return or confidential destruction infeasible, for so long as the Business Associate maintains such Protected Health Information and Electronic Protected Health Information. The obligations outlined in Section 2, Obligations and Activities of Business Associate, will remain in force to the extent applicable.

#### **H.14.9.11** Miscellaneous

##### **H.14.9.11.1** Regulatory References

**H.14.9.11.1.1** A reference in this HIPAA Compliance Clause to a section of HIPAA, including the Privacy Rule or the Security Rule means the section as in effect or as amended.

##### **H.14.9.11.2** Amendment

**H.14.9.11.2.1** The Parties agree to take such action as is necessary to amend this HIPAA Compliance Clause from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA.

**H.14.9.22.2.2** Except for provisions required by law as defined herein, no provision hereof shall be deemed waived unless in writing and signed by duly authorized representatives of the Parties. A waiver with respect to one (1) event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this HIPAA Compliance Clause.

##### **H.14.9.11.3** Survival

**H.14.9.11.3.1** The respective rights and obligations of the Business Associate under Section 9, Term and Termination, of this HIPAA Compliance Clause and Sections 9 and 20 of the Standard Contract Provisions (Attachment J.1) for use with the District of Columbia Government Supply and Services Contracts shall survive termination of the Contract.

##### **H.14.9.11.4** Interpretation

**H.14.9.11.4.1** Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit the Covered Entity to comply with applicable federal and District of Columbia laws, rules and regulations, and the Privacy Rule and Security Rule, and any requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable federal and District of Columbia laws, rules and regulations shall

supersede the Privacy Rule and Security Rule if, and to the extent that they impose additional requirements, have requirements that are more stringent than or provide greater protection of patient privacy or the security or safeguarding of Protected Health Information and Electronic Protected Health Information than those of HIPAA and its Privacy Rule and Security Rule (Attachment J.8) .

**H.14.9.11.4.2** The terms of this HIPAA Compliance Clause amend and supplement the terms of the Contract, and whenever possible, all terms and conditions in this HIPAA Compliance Clause are to be harmonized. In the event of a conflict between the terms of the HIPAA Compliance Clause and the terms of the Contract, the terms of this HIPAA Compliance Clause shall control; provided, however, that this HIPAA Compliance Clause shall not supersede any other federal or District of Columbia law or regulation governing the legal relationship of the Parties, or the confidentiality of records or information, except to the extent that the Privacy Rule preempts those laws or regulations.

**H.14.9.11.4.3** In the event of any conflict between the provisions of the Contract (as amended by this HIPAA Compliance Clause) and the Privacy Rule and Security Rule, the Privacy Rule and Security Rule shall control.

**H.14.9.11.5** **No Third-Party Beneficiaries**

**H.14.9.11.5.1** The Covered Entity and the Business Associate are the only parties to this HIPAA Compliance Clause and are the only parties entitled to enforce its terms.

**H.14.9.11.5.2** Except for the rights of Individuals, as defined herein, to access to and amendment of their Protected Health Information and Electronic Protected Health Information, and to an accounting of the uses and disclosures thereof, in accordance with Paragraphs (2)(f), (g) and (j), nothing in the HIPAA Compliance Clause gives, is intended to give, or shall be construed to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this HIPAA Compliance Clause.

**H.14.9.11.6** **Compliance with Applicable Law**

**H.14.9.11.6.1** The Business Associate shall comply with all federal, District of Columbia laws, regulations, executive orders and ordinances, as they may be amended from time to time during the term of this HIPAA Compliance Clause and the Contract; to the extent they are applicable to this HIPAA Compliance Clause and the Contract.

**H.14.9.11.7** **Governing Law and Forum Selection**

**H.14.9.11.7.1** The Contract shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, the Security Rule and other applicable

laws and regulations. All other aspects of this Contract shall be governed under the laws of the District of Columbia.

**H.14.9.11.7.2** The Covered Entity and the Business Associate agree that all disputes which cannot be amicably resolved by the Covered Entity and the Business Associate regarding this HIPAA Compliance Clause shall be litigated before the District of Columbia Contract Appeals Board, the District of Columbia Court of Appeals, or the United States District Court for the District of Columbia having jurisdiction, as the case may be.

**H.14.9.11.7.3** The Covered Entity and the Business Associate expressly waive any and all rights to initiate litigation, arbitration, mediation, negotiations and/or similar proceedings outside the physical boundaries of the District of Columbia and expressly consent to the jurisdiction of the above tribunals.

**H.23.11.8** Indemnification

**H.14.9.11.8.1** The Business Associate shall indemnify, hold harmless and defend the Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with:

**H.14.9.11.8.1.1** Any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and

**H.14.9.11.8.1.2** Any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the performance of the Business Associate under this HIPAA Compliance Clause.

**H.14.9.11.9** Injunctive Relief

**H.14.9.11.9.1** Notwithstanding any rights or remedies under this HIPAA Compliance Clause or provided by law, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received Protected Health Information and Electronic Protected Health Information from the Business Associate.

**H.14.9.11.10** Assistance in litigation or administrative proceedings

**H.14.9.11.10.1** The Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or its workforce assisting the Business Associate in the fulfillment of its obligations under this HIPAA Compliance Clause and the Contract, available to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the

Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the Privacy Rule, Electronic Protected Health Information or other laws relating to security and privacy, except where the Business Associate or its agents, affiliates, subsidiaries, subcontractors or its workforce are a named adverse party.

**H.14.9.11.11** Notices

**H.14.9.11.11.1** Any notices between the Parties or notices to be given under this HIPAA Compliance Clause shall be given in writing and delivered by personal courier delivery or overnight courier delivery, or by certified mail with return receipt requested, to the Business Associate or to the Covered Entity, to the addresses given for each Party below or to the address either Party hereafter gives to the other Party.

**H.14.9.11.11.2** Any notice being address and mailed in the foregoing manner, shall be deemed given five (5) business days after mailing. Any notice delivered by personal courier delivery or overnight courier delivery shall be deemed given upon notice upon receipt.

If to the Business Associate, to:	If to the Covered Entity, to:
	Department of Health Care Finance
	825 North Capitol St., NE Suite 5135
	Washington, DC 20002
	Attention: DHCF General Counsel
	Fax: 202-442-4790

**H.14.9.11.12** Headings

**H.14.9.11.12.1** Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

**H.14.9.11.13** Counterparts; Facsimiles

**H.14.9.11.13.1** This HIPAA Compliance Clause may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

**H.14.9.11.14** Successors and Assigns

**H.14.9.11.14.1** The provisions of this HIPAA Compliance Clause shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns, if any.

**H.14.9.11.15** Severance

**H.14.9.11.15.1** In the event that any provision of this HIPAA Compliance Clause is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this HIPAA Compliance Clause will remain in full force and effect.

**H.14.9.11.15.2** In addition, in the event a Party believes in good faith that any provision of this HIPAA Compliance Clause fails to comply with the then-current requirements of the Privacy Rule, such party shall notify the other Party in writing, in the manner set forth in Section 10. Miscellaneous, Paragraph k. Notices.

**H.14.9.11.15.3** Within ten (10) business days from receipt of notice, the Parties shall address in good faith such concern and amend the terms of this HIPAA Compliance Clause, if necessary to bring it into compliance. If, after thirty (30) days the HIPAA Compliance Clause fails to comply with the Privacy Rule and the Security Rule (Attachment J.8), then either Party has the right to terminate this HIPAA Compliance Clause upon written notice to the other Party.

**H.14.9.11.16** Independent Contractor

**H.14.9.11.16.1** The Business Associate will function as an independent contractor and shall not be considered an employee of the Covered Entity for any purpose.

**H.14.9.11.16.2** Nothing in this HIPAA Compliance Clause shall be interpreted as authorizing the Business Associate workforce, its subcontractor(s) or its agent(s) or employee(s) to act as an agent or representative for or on behalf of the Covered Entity.

**H.14.9.11.17** Entire Agreement

**H.14.9.11.17.1** This HIPAA Compliance Clause, as may be amended from time to time pursuant to Section 10 Miscellaneous, Paragraph b. Amendment, which incorporates by reference the Contract, and specific procedures from the Medical Assistance Administration Privacy Policy Operations Manual, constitutes the entire agreement and understanding between the Parties and supersedes all prior oral and written agreements and understandings between them with respect to applicable District of Columbia and federal laws, rules and regulations, HIPAA and the Privacy Rule and Security Rule, and any rules, regulations, requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary.

**H.14.9.11.18** Attachments:

- H.14.9.11.18.1** Exhibit A, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.14.a) Individual's Information Rights – Access
- H.14.9.11.18.2** Exhibit B, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.15.a) Individual's Information Rights - Amendment
- H.14.9.11.18.3** Exhibit C, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.25 Standard Procedures - Identity and Procedure Verification
- H.14.9.11.18.4** Exhibit D, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.27 Standard Procedures - Logging Disclosures for Accounting
- H.14.9.11.18.5** Exhibit E, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.16.a) Individual's Information Rights - Disclosure Accounting

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## **SECTION I STANDARD CONTRACT CLAUSES**

### **I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 (Attachment J.1) are incorporated as part of the contract.

### **I.2 CONTRACTS THAT CROSS FISCAL YEARS**

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

### **I.3 CONFIDENTIALITY OF INFORMATION**

All information obtained by Contractor relating to any employee or customer of the District will be kept in absolute confidence and shall not be used by Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District and Federal laws governing the confidentiality of records.

### **I.4 TIME**

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

### **I.5 RIGHTS IN DATA**

**I.5.1** “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

**I.5.2** The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer

software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

- I.5.3** The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of this Contract shall be the sole property of the District. Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. Contractor agrees not to assert any rights in common law or in equity in such data. Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.
- I.5.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

- I.5.6.2** Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
- I.5.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.
- I.5.7** The restricted rights set forth in Section I.5.6 are of no effect unless the data is marked by Contractor with the following legend:
- I.5.7.1** RESTRICTED RIGHTS LEGEND
- Use, duplication, or disclosure is subject to restrictions stated in Contract No. \_\_\_\_\_ with \_\_\_\_\_ (Contractor's Name); and,
- I.5.7.2** If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.
- I.5.8** In addition to the rights granted in Section I.5.6 above, Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.5.6 above, under any copyright owned by Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.
- I.5.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or Contractor's rights in that subcontractor data or computer software which is required for the District.
- I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, Contractor shall furnish to the District, a copy of the source code

with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

- I.5.11** Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, for:
- I.5.11.1** Violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or,
- I.5.11.2** Based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- I.5.12** Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
- I.5.13** Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by Contractor at the time of delivery of such work

## **I.6 OTHER CONTRACTORS**

Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

## **I.7 SUBCONTRACTS**

Contractor hereunder shall not subcontract any of Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by Contractor. Any such subcontract shall specify that Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

## **I.8 INSURANCE**

### **I.8.1 General Requirements**

The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the Contracting Officer giving the evidence of required coverage prior to commencing work under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of that insurer(s) have been provided to and accepted by the Contracting Officer. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed; have either an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the Contracting Officer shall be given thirty (30) days prior written notice in the event that the stated limits in the declaration page is reduced via endorsement or the policy is cancelled prior to the expiration date shown on the certificate. The Contractor shall provide the Contracting Officer with ten (10) days prior written notice in the event of non-payment of premium.

#### **I.8.1.1 Commercial General Liability Insurance**

The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed, that it carries \$1,000,000.00 per occurrence limits; \$2,000,000.00 aggregate; Bodily injury and property damage including but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors; The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.

#### **I.8.1.2 Automobile Liability Insurance**

The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of the contract. The policy shall provide a \$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

**I.8.1.3 Workers' Compensation Insurance****I.8.1.3.1 Workers' Compensation Insurance**

The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

**I.8.1.3.2 Employer's Liability Insurance**

The Contractor shall provide employer's liability insurance as follows: \$1 million per accident for injury; \$1 million per employee for disease; and \$1 million for policy disease limit.

**I.8.1.4 Umbrella or Excess Liability Insurance**

The Contractor shall provide umbrella or excess liability insurance (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$2,000,000.00 per occurrence with the District of Columbia as an additional insured.

**I.8.1.5 Professional Liability Insurance (Errors & Omissions)**

The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission caused by the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000.00 per occurrence for each wrongful act and \$1,000,000.00 annual aggregate for each wrongful act.

The Contractor shall maintain this insurance for five (5) years following the District's final acceptance of the work.

**I.8.2 Duration**

The Contractor shall carry all required insurance until the contract work is accepted by the District and shall carry the required General Liability; and Professional Liability; and any required Employment Practices Liability Insurance for five (5) years following final acceptance of the work performed under this contract.

**I.8.3 Liability**

These are the required minimum insurance limits required by the District of Columbia. HOWEVER THE REQUIRED MINIMUM INSURANCE

REQUIREMENTS WILL IN NO WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.

#### **I.8.4 Contractor's Property**

Contractors and subcontractor are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding, and temporary structures, rented machinery, or owned or leased equipment. A waiver of subrogation shall apply in the favor of the District of Columbia.

#### **I.8.5 Measure of Payment**

The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

#### **I.8.6 Notification**

The Contractor shall immediately provide the Contracting Officer with written notice in the event its insurance has or will be substantially changed, cancelled or not renewed, and provide an updated Certificate of Insurance to the Contracting Officer.

#### **I.8.7 Certificates of Insurance**

The Contractor shall submit Certificates of Insurance giving evidence of the required insurance coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

James H. Marshall  
899 North Capitol Street, 6<sup>th</sup> Floor  
Washington, DC 20002  
Phone: 202 442-9106  
[jim.marshall@dc.gov](mailto:jim.marshall@dc.gov)

#### **I.8.8 Disclosure of Information**

The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract

**I.9 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Attachment J.3. An award cannot be made to any Offeror who has not satisfied the equal employment requirements.

**I.10 RESERVED****I.11 CONTINUITY OF SERVICES**

**I.11.1** The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District or another contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:

- a. Furnish phase-out, phase-in (transition) training; and
- b. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

**I.11.2** The Contractor shall, upon the Contracting Officer's written notice:

- a. Furnish phase-in, phase-out services for up to 90 days after this contract expires and
- b. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval.

**I.11.3** The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

**I.11.4** The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

**I.11.5** Only in accordance with a modification issued by the Contracting Officer, the Contractor shall be reimbursed for all reasonable phase- in, phase-out costs (i.e.,

costs incurred within the agreed period after contract expiration that result from phase- in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

## **I.12 ORDER OF PRECEDENCE**

The contract awarded as a result of this RFP will contain the following clause:

### **ORDER OF PRECEDENCE**

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- a. An applicable Court Order, if any
- b. Contract document
- c. Standard Contract Provisions
- d. Contract attachments other than the Standard Contract Provisions
- e. RFP, as amended
- f. BAFOs (in order of most recent to earliest)
- g. Proposal

**SECTION J  
ATTACHMENTS**

The following list of attachments are incorporated by this reference and made a part of the resulting contract in the order of priority described in I.12.

<b>Attachment Number</b>	<b>Document</b>
<b>J.1</b>	Standard Contract Provisions for Use with the Supply and Service Contract, dated March 2007
<b>J.2</b>	U.S. Department of Labor Wage Determination No.: 2005-2103 Revision No.: 10, dated June 15, 2010
<b>J.3</b>	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85
<b>J.4</b>	Department of Employment Services First Source Employment Agreement
<b>J.5</b>	Way to Work Amendment Act of 2006 - Living Wage Notice
<b>J.6</b>	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet
<b>J.7</b>	Drug Free Workplace Certification
<b>J.8</b>	HIPAA Regulations
<b>J.9</b>	Cost/Price Disclosure Certification
<b>J.10</b>	Past Performance Evaluation Form
<b>J.11</b>	Tax Affidavit

**SECTION K  
REPRESENTATIONS, CERTIFICATIONS AND  
OTHER STATEMENTS OF OFFEROR**

**K.1 AUTHORIZED NEGOTIATORS**

The Offeror represents that the following persons are authorized to negotiate on its behalf with the District in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**K.2 TYPE OF BUSINESS ORGANIZATION**

**K.2.1** The Offeror, by checking the applicable box, represents that:

a. It operates as:

- A corporation incorporated under the laws of the state of \_\_\_\_\_
  - An individual,
  - A partnership,
  - A nonprofit organization, or
  - A joint venture

b. If the Offeror is a foreign entity, it operates as:

- An individual,
- A joint venture, or
- A corporation registered for business in \_\_\_\_\_  
(Country)

**K.3 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS**

Mayor’s Order 85-85, “Compliance with Equal Opportunity Obligations in Contracts”, dated June 10, 1985 and the Office of Human Rights’ regulations, Chapter 11, “Equal Employment Opportunity Requirements in Contracts”, promulgated August 15, 1986 (4 DCMR Chapter 11, 33 DCR 4952) are included as a part of this solicitation and require the following certification for contracts subject to the order. Failure to complete the certification may result in rejection of

the Offeror for a contract subject to the order. I hereby certify that I am fully aware of the content of the Mayor’s Order 85-85 and the Office of Human Rights’ regulations, Chapter 11, and agree to comply with them in performance of this contract.

Offeror \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

Offeror  has  has not participated in a previous contract or subcontract subject to the Mayor’s Order 85-85. Offeror  has  has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed subcontractors. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor’s Order.)

**K.4 BUY AMERICAN CERTIFICATION**

The Offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (See Clause 23 of the SCP, “Buy American Act”), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

\_\_\_\_\_ EXCLUDED END PRODUCTS  
\_\_\_\_\_ COUNTRY OF ORIGIN

**K.5 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION**

Each Offeror shall check one of the following:

- No person listed in Clause 13 of the Standard Contract Provisions (Attachment J.1), “District Employees Not To Benefit” will benefit from this contract.
- The following person(s) listed in Clause 13 of the Standard Contract Provisions (Attachment J.1), “District Employees Not To Benefit” may benefit from this contract. For each person listed, attach the affidavit required by Clause 13.

\_\_\_\_\_  
\_\_\_\_\_

**K.6 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

**K.6.1** Each signature of the Offeror is considered to be a certification by the signatory that:

**K.6.1.1** The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any Offeror or competitor relating to:

- a. those prices,
- b. the intention to submit a contract, or
- c. the methods or factors used to calculate the prices in the contract.

**K.6.1.2** The prices in this contract have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before contract opening unless otherwise required by law; and

**K.6.1.3** No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

**K.6.1.4** Each signature of the Offeror is considered to be a certification by the signatory that the signatory:

- a. Is the person in the Offeror's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- b. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above:

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*(insert full name of person(s) in the organization responsible for determining the prices offered in this contract and the title of his or her position in the Offeror's organization);*

As an authorized agent, does certify that the principals named in subdivision (b)(2) have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

- d. If the Offeror deletes or modifies subparagraph (a)(2) above, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**K.7 TAX CERTIFICATION**

Each Offeror must submit with its offer, a sworn Tax Certification Affidavit, incorporated herein as Attachment J.11.

**K.8 CERTIFICATION OF ELIGIBILITY**

**K.8.1** The Offeror’s signature shall be considered a certification by the signatory that the Offeror or any person associated therewith in the capacity of owner, partner, director, officer, principal, or any position involving the administration of funds:

- a. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility under any federal, District or state statutes;
- b. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal, District or state agency within the past three (3) years;
- c. Does not have a proposed debarment pending; and
- d. Has not been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

**K.8.2** Indicate below any exception to your certification of eligibility and to whom it applies their position in the Offeror’s organization, the initiating agency, and dates of action. Exceptions will not necessarily result in denial of award, but will be considered in determining responsibility of the Offeror. Providing false information may result in criminal prosecution or administrative sanctions.

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**SECTION L  
INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS**

**L.1 CONTRACT AWARD**

**L.1.1 MOST ADVANTAGEOUS TO THE DISTRICT**

The District intends to award one contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

**L.1.2 INITIAL OFFERS**

The District may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the Offeror's best terms from a standpoint of cost or price, technical and other factors.

**L.2 PROPOSAL FORM, ORGANIZATION AND CONTENT**

**L.2.1 TECHNICAL AND PRICE VOLUMES AND NUMBER OF COPIES**

<b>Proposal</b>	<b>Number of Copies</b>
Technical Proposal in Response to Solicitation No. DCHT-2011-R-0003 ACA Consulting Services Offeror's Name"	1 original 5 Copies
"Price Proposal in Response to Solicitation No. DCHT-2011-R-0003 ACA Consulting Services Offeror's Name"	1 original 5 Copies
"Redacted Technical Proposal in Response to Solicitation No. DCHT-2011-R-0003 ACA Consulting Services Offeror's Name"	1 Compact Disc
"Redacted Price Proposal in Response to Solicitation No. DCHT-2011-R-0003 ACA Consulting Services Offeror's Name"	1 Compact Disc

**L.2.2 TECHNICAL AND PRICE PROPOSAL AND EVALUATION CRITERIA**

Offerors are directed to Section M.3 of the solicitation, Evaluation Criteria which provides the specific proposal evaluation criteria to be used to evaluate each

proposal. The Offeror shall respond to each criterion in a way that will allow the District to evaluate and assess the Offeror's response and ability to meet the District's requirements. The information requested in Section L.2.4, Proposal Format and Organization has been determined to be essential in the proposal evaluation process and will facilitate the evaluation of all proposals in accordance with the Evaluation Criteria (M.3). The Offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description reflecting the manner in which the Offeror proposes to successfully meet the District's requirements as described in Sections C and H of the solicitation.

### **L.2.3 GENERAL PROPOSAL REQUIREMENTS**

The Offeror's Technical and Price Proposal shall adhere specifically to the general proposal requirements described below:

- a. Transmittal Letter - The Offeror's Technical and Price Proposals shall contain a Transmittal Letter to include at a minimum the following:
  1. The Offeror's full legal name, address, and phone number
  2. Identification of the Offeror's authorized representative, the representative's title, phone number and e-mail address
  3. Identification of Offeror's Contact Person for the proposals, if different from the representative; the Contact person's address, phone number, and e-mail address
  4. A statement affirming the Offeror's acceptance of the contract provisions as described in Sections A – K including the Standard Contract Provisions of the solicitation; Offeror's proposal shall not take exceptions to the contract provisions later in the Offeror's proposal.
  5. Signature of an authorized representative of the Offeror's organization.
- b. Table of Contents - The Offeror's Technical and Price Proposals shall include a Table of Contents providing the page numbers and location for each section and subsection of the Offeror's proposal as described in Section L.2.4.
- c. The Offeror's Technical and Price Proposals shall be:
  1. Presented in the same order as described in Section L.2.4
  2. The narrative section of each volume shall be formatted as follows:
    - i. Typewritten (8.5' by 11' bond paper)
    - ii. Single spaced
    - iii. One-inch margins
    - iv. Font Size of 12 or larger; 10 or larger for charts and graphs
    - v. Each page number of the Offeror's proposal shall be numbered; subsequent revisions, if any, shall be

similarly identified to show revision number and date

3. The Attachments section shall be clearly labeled
  4. Electronic media such as videotapes, audiotapes and CD-ROM may not be submitted; and
- d. The original Technical and Price proposals shall be single-sided; copies may be double-sided

## **L.2.4 PROPOSAL FORMAT AND CONTENT**

### **L.2.4.1 Volume I - Technical Proposal Content Instructions**

The Offeror's Technical Proposal shall be organized and presented in the following clearly marked separate sections:

#### **L.2.4.1.1 Section 1 - Technical Approach and Methodology**

The information contained in this section shall facilitate the evaluation of the Offeror's technical approach and methodology to provide the ACA consulting services described in C.3. The Offeror shall provide the following at a minimum the following narratives:

- a. A description of the Offeror's understanding of health care reform and overall understanding of the District's requirements (C.3);
- b. A discussion of the Offeror's knowledge of the Affordable Care Act and the application of portions of the ACA relevant to the District and the impact on Medicaid;
- c. A discussion of the Offeror's specific knowledge of Health Insurance Exchanges and the Offeror's technical approach and methodology to monitor the Stakeholder Engagement, Exchange Strategic Plan and the Exchange Operational Plan;
- d. A discussion of the Offeror's knowledge and familiarity with Medicaid and Medicaid reimbursement principles including fee for service and managed care; and
- e. A discussion of innovative features to be used by the Offeror to complete the required services and the expected benefit or enhancement to be realized as a result.

#### **L.2.4.1.2 Section 2 - Technical Expertise and Capacity**

The information contained in this section shall facilitate the evaluation of the Offeror's technical expertise and capacity to provide the ACA consulting services described in C.3. The Offeror shall provide at a minimum the following:

- a. A discussion of the Offeror's Staff to be utilized in the fulfillment of the required services described in Section C.3. The discussion shall

highlight relevant experience and the application of that experience to the required services described in Section C.3;

- b. An Organization Chart to identify the staff to provide services and the reporting lines and accountability; and
- c. Resumes for staff to provide services

#### **L.2.4.1.3 Section 3 - Past Performance and Previous Experience**

The information contained in this section shall facilitate the evaluation of the Offeror's past performance and previous experience providing services similar in size and scope as those described in Section C.3. The Offeror shall provide at a minimum the following:

- a. The Offeror shall describe its overall experience providing services similar in size and scope as those described in Section C.3. The description shall include examples of both favorable and unfavorable experiences and situations providing services and how these experiences will influence the Offeror's delivery of the required services for the District;
- b. The Offeror shall provide a discussion of the Offeror's knowledge and experience of health care in the District of Columbia or a jurisdiction similar in size and demographics as the District;
- c. The Offeror shall provide a discussion of the Offeror's previous experience and past performance with health care reform;
- d. The Offeror shall provide a list of **all** contracts and subcontracts the Offeror has performed similar in size and scope as the required services described in Section C.3 within the past five (5) years. The Offeror's list shall include the following information for each contract or subcontract:
  - 1. Name of contracting entity;
  - 2. Contract number;
  - 3. Contract type;
  - 4. Contract duration (or Period);
  - 5. Total contract value;
  - 6. Description of work performed;
  - 7. Contact Person name, phone, and e-mail address
- e. The Offeror shall provide at a minimum three (3) completed Performance Evaluation Form (Attachment J.10) for three entities identified in L.2.4.1.3 d above.

#### **L.2.4.1.4 Representations and Certifications**

Offeror shall include the following completed representations and certifications:

- a. H.14.9 HIPAA Business Associate Agreement;
- b. Attachment J.3 Equal Employment Opportunity Forms;

- c. Attachment J.4 First Source Employment Agreement;
- d. Attachment J. 7 Drug Free Workplace;
- e. Attachment J.11 Tax Affidavit;
- f. K.1 Authorized Negotiators;
- g. K.2 Type of Organization;
- h. K.3 EEO Certification;
- i. K.4 Buy American Certification;
- j. K.8 Certification of Eligibility; and
- k. L.13 Redacted Proposal.

#### **L.2.4.2 Volume II: Price Proposal**

**L.2.4.2.1** Offeror's Price Proposal shall include at a minimum the following:

- a. A completed Section B.3 Price Schedule;
- b. A completed Cost/Price Certification (Attachment J.9); and
- c. A completed K.6 Certification of Independent Price Determination.

### **L.3 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS**

#### **L.3.1 PROPOSAL SUBMISSION**

Proposals must be submitted no later than **2:00pm March 7, 2011**. Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- a. The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;
- b. The proposal or modification was sent by mail and it is determined by the CO that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or
- c. The proposal is the only proposal received.

#### **L.3.2 WITHDRAWAL OR MODIFICATION OF PROPOSALS**

An Offeror may modify or withdraw its proposal upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of proposals, but not later than the closing date and time for receipt of proposals.

#### **L.3.3 POSTMARKS**

The only acceptable evidence to establish the date of a late proposal, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, modification or request for withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown on the postmark, the proposal shall be considered late unless the Offeror can furnish evidence from the postal authorities of timely mailing.

#### **L.3.4 LATE MODIFICATIONS**

A late modification of a successful proposal, which makes its terms more favorable to the District, shall be considered at any time it is received and may be accepted.

#### **L.3.5 LATE PROPOSALS**

A late proposal, late modification or late request for withdrawal of a proposal that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful proposals resulting from this solicitation.

#### **L.4 EXPLANATION TO PROSPECTIVE OFFERORS**

If a prospective Offeror has any questions relating to this solicitation, the prospective Offeror shall submit the question in writing to the contact person, identified on page one. The prospective Offeror shall submit questions no later than **4:00 pm February 25, 2011**. The District will not consider any questions received after 4:00pm February 25, 2011 . The District will furnish responses promptly to all prospective Offerors. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective Offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

#### **L.5 FAILURE TO SUBMIT OFFERS**

Recipients of this solicitation not responding with an offer should not return this solicitation. Instead, they should advise the CO, James H. Marshall, by e-mail at [jim.marshall@dc.gov](mailto:jim.marshall@dc.gov) whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the CO of the reason for not submitting a proposal in response to this solicitation. If a recipient does not submit an offer and does not notify the CO that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

**L.6 RESTRICTION ON DISCLOSURE AND USE OF DATA**

**L.6.1** Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

*"This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process.*

*If, however, a contract is awarded to this Offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets).*"

**L.6.2** Mark each sheet of data it wishes to restrict with the following legend:

*"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."*

**L.7 PROPOSALS WITH OPTION YEARS**

The Offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include pricing for the option year(s).

**L.8 PROPOSAL PROTESTS**

Any actual or prospective Offeror or Contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 717 14th Street, N.W., Suite 430, Washington, D.C. 20004. The aggrieved

person shall also mail a copy of the protest to the Contracting Officer for the solicitation.

**L.9           SIGNING OF OFFERS**

The Offeror shall sign the offer and print or type its name on the Solicitation, Offer and Award form of this solicitation. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

**L.10          UNNECESSARILY ELABORATE PROPOSALS**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor desired.

**L.11          RETENTION OF PROPOSALS**

All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the Offerors.

**L.12          PROPOSAL COSTS**

The District is not liable for any costs incurred by the Offerors in submitting proposals in response to this solicitation.

**L.13          ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT REQUESTS**

In addition to other proposal submission requirements, the Offeror shall submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code §2-534, in order for the District to comply with §2-536(b) that requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable FOIA exemption under §2-534(a)(1).

**L.14          CERTIFICATES OF INSURANCE**

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverage as specified in Section I.8 electronically to

James H. Marshall

Contracting Officer  
Department of Health Care Finance  
899 North Capitol Street, NE, 6<sup>th</sup> Floor  
Washington, DC 20001

**L.15           ACKNOWLEDGMENT OF AMENDMENTS**

The Offeror shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A, Solicitation, Offer and Award form; or (c) by letter, telegram or e-mail from an authorized negotiator. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An Offeror's failure to acknowledge an amendment may result in rejection of its offer.

**L.16           BEST AND FINAL OFFERS**

If, subsequent to receiving original proposals, negotiations are conducted, all Offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at the designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the CO determines that it is clearly in the District's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received. If discussions are reopened, the CO shall issue an additional request for best and final offers to all Offerors still within the competitive range.

**L.17           LEGAL STATUS OF OFFEROR**

Each proposal shall provide the following information:

**L.17.1**       Name, address, telephone number and federal tax identification number of Offeror;

**L.17.2**       A copy of each District of Columbia license, registration or certification that the Offeror is required by law to obtain. This mandate also requires the Offeror to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862, if the Offeror is required by law to make such certification. If the Offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

**L.17.3** If the Offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

**L.18 FAMILIARIZATION WITH CONDITIONS**

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered, and the conditions under which the work is to be accomplished. Contractors will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

**L.19 GENERAL STANDARDS OF RESPONSIBILITY**

The prospective contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit the documentation listed below, within five (5) days of the request by the District.

**L.19.1** Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

**L.19.2** Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government business commitments.

**L.19.3** Evidence of the necessary organization, experience, accounting and operational control, technical skills, or the ability to obtain them.

**L.19.4** Evidence of compliance with the applicable District licensing and tax laws and regulations.

**L.19.5** Evidence of a satisfactory performance record, record of integrity and business ethics.

**L.19.6** Evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.

**L.19.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

**L.19.8** Evidence of fiduciary bond (H.14.8.2), Disclosure Form (H.14 10) and Certificate of Insurance (I.8.7).

**L.19.9** If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be nonresponsible

**L.20 PROHIBITION AGAINST UNAUTHORIZED CONTACT**

The District is committed to a proposal process that maintains the highest level of integrity. Accordingly, Offerors, as well as their agents, liaisons, advocates, lobbyists, “legislative consultants,” representatives, or others promoting their position, are limited to those communications authorized by and described in this RFP. Any attempt to influence any of the participants, whether that attempt is oral or written, formal or informal, direct or indirect, outside of the RFP process is strictly prohibited.

## SECTION M EVALUATION FACTORS

### M.1 EVALUATION FOR AWARD

The contract will be awarded to the responsible Offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

### M.2 TECHNICAL RATING

#### M.2.1 The Technical Rating Scale is as follows:

<b>Numeric Rating</b>	<b>Adjective</b>	<b>Description</b>
0	Unacceptable	Fails to meet minimum requirements; e.g., no demonstrated capacity, major deficiencies which are not correctable; Offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

**M.2.2** The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the Offeror's score for each factor. The Offeror's total technical score will be determined by adding the Offeror's score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the Offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.

**M.2.2.1** If sub-factors are applied, the Offeror's total technical score will be determined by adding the Offeror's score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two sub-factors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the Offeror's response as "Good" for the first subfactor and "Poor" for

the second subfactor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

### **M.3 EVALUATION CRITERIA**

#### **M.3.1 TECHNICAL EVALUATION FACTORS**

##### **M.3.1.1 Technical Approach and Methodology (0 – 30 Points)**

This factor will examine the Offeror's technical approach and methodology to ACA Consulting services. Evaluation of the Offeror's technical approach and methodology allows the District to assess the Offeror's understanding and technical knowledge to perform the required services based on information provided in response to L.2.4.1.1.

##### **M.3.1.2 Technical Expertise and Capacity (0 – 20 Points)**

This factor will examine the Offeror's technical expertise and capacity to provide ACA services. Evaluation of technical expertise and capacity allows the District to assess the Offeror's staff and expertise and ability to perform the required services based on information provided in response to L.2.4.1.2.

##### **M.3.1.3 Past Performance and Previous Experience (0 – 30 Points)**

This factor will examine the Offeror's past performance and previous experience providing consulting services similar in size and scope as those required by the District and described in C.3. Evaluation of past performance and previous experience allows the District to assess the Offeror's ability to perform and relevance of the work performed based on information provided in response to L.2.4.1.3.

#### **M.3.2 PRICE**

**M.3.2.1** Price evaluations will account for up to twenty (20) points of the total score. Unlike the technical evaluation, the price evaluation will be objective. Hence, the Offeror with the lowest price within an acceptable range will receive the maximum points. All other proposals will receive a proportionately lower total score in accordance with the following formula.

$$\frac{\text{Lowest Total Price Proposal}}{\text{Total Price of Proposal Being Evaluated}} \times (20) = \text{Price Score}$$

**M.3.3 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.5.2  
(12 POINTS MAXIMUM)**

**M.3.4 TOTAL POINTS**

Total points shall be the cumulative total of the Offeror's technical criteria points, price criterion points and preference points, if any.

**M.4 EVALUATION OF OPTION YEARS**

The District will evaluate offers for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District's requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.

**M.5 PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES**

Under the provisions of the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005", as amended, D.C. Official Code § 2-218.01 *et seq.* (the Act), the District shall apply preferences in evaluating proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, veteran-owned, local manufacturing, or local with a principal office located in an enterprise zone of the District of Columbia.

**M.5.1 APPLICATION OF PREFERENCES**

For evaluation purposes, the allowable preferences under the Act for this procurement shall be ap

**M.5.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to this Request for Proposals (RFP).

**M.5.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to this RFP.

**M.5.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to this RFP.

**M.5.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to this RFP.

**M.5.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to this RFP.

**M.5.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to this RFP.

**M.5.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the VOB in response to this RFP.

**M.5.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LMBE in response to this RFP.

**M.5.2** **MAXIMUM PREFERENCE AWARDED**

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to this RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

**M.5.3** **PREFERENCES FOR CERTIFIED JOINT VENTURES**

When DSLBD certifies a joint venture, the certified joint venture will receive preferences as a prime contractor for categories in which the joint venture and the certified joint venture partner are certified, subject to the maximum preference limitation set forth in the preceding paragraph.

**M.5.4** **VERIFICATION OF OFFEROR'S CERTIFICATION AS A CERTIFIED BUSINESS ENTERPRISE**

**M.5.4.1** Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its proposal. The contracting officer will verify the offeror's certification with DSLBD, and the offeror should not submit with its proposal any documentation regarding its certification as a certified business enterprise.

**M.5.4.2** Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development  
ATTN: CBE Certification Program  
441 Fourth Street, NW, Suite 970N  
Washington DC 20001

**M.5.4.3** All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

**M.6 EVALUATION OF PROMPT PAYMENT DISCOUNT**

**M.6.1** Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the offeror.

**M.6.2** In connection with any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.